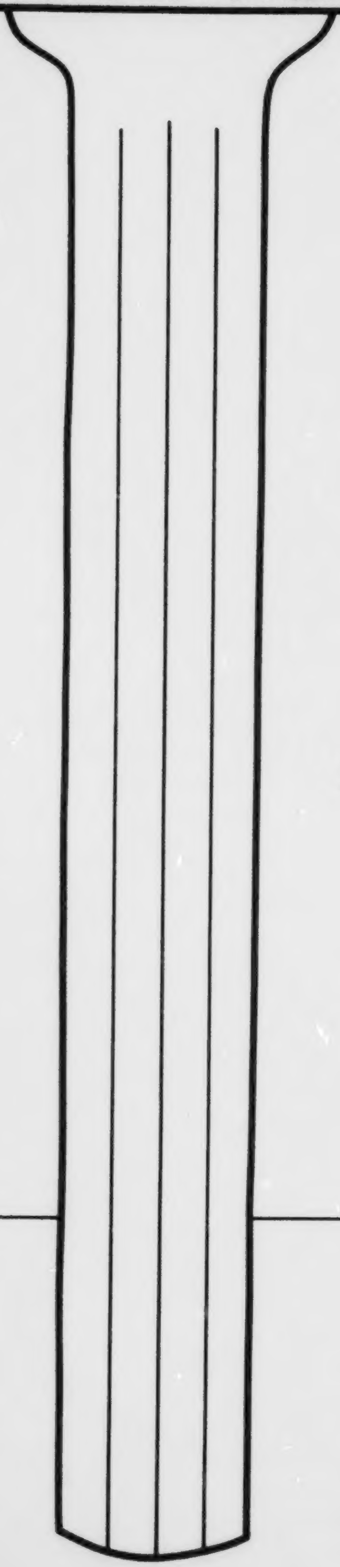

Planning: News Views and Reviews

Seminar Proceedings

Nova Scotia Planning Seminar
November 8—10, 1982

Province of Nova Scotia
Department of Municipal Affairs
P.O. Box 216, Halifax, Nova Scotia B3J 2M4 Phone 424-4094

Community Planning Division

To the Reader:

Between these cov[illegible] you will find a synopsis of the 1982 Seminar - our 6th. - on the theme "Planning: News, Views, and Reviews".

The proposed new Planning Act was the principal news item of the seminar and it, among other things, evoked views from many of the participants. The reviews, particularly those provided by Robert Blois and Ted Wickwire, added considerably to the seminar. In fact the record herein of these two speakers might well be considered "required reading" for planners in Nova Scotia.

We thank you for your attendance and participation and trust that you will find the enclosed proceedings a useful resource document.

Yours sincerely,

Ron Simpson

R.G. Simpson
Provincial Director of Planning

RGS/syj

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WELCOME

WELCOME

Honourable T.J. McInnis
Minister of Municipal Affairs
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I've not had the pleasure of speaking to a group of planners before, and as I mentioned to someone on the way here, I normally don't speak at all for the first few hours on Monday mornings!

You're a very auspicious group and I'm sure a very capable group. I got indoctrinated into the world of planning during the 1978 election campaign. Any politician or aspiring politician knows all the answers, and of course, that was the case back then. Everyone knows how to plan - it's apparently a simple thing. Marvin Moore, my counterpart in Alberta, has somewhat of a distaste for planners. I mention that simply because planning has always been to some, a mysterious concept. I don't know whose fault that is, maybe it is the planners who like to have it that way. I wouldn't call you a creature, but you are a noteworthy specie to the politician, in that you can make or break him. In regard to my election in 1978, I recall distinctly that planning issues became political issues because the public was not involved in the planning process to the extent that it should be.

At this conference, I understand you will be reviewing the legislative parameters that you have been able to operate under and fulfill. Planning is such a volatile and sensitive issue that I would encourage you at this conference to really look at some of the more political parts of it.

Ron Simpson, the Director of Planning for the Province, will be giving an overview of the proposed Act. I would encourage you to bring forward any reports because this Act is going to be a very important one for the Province.

I wish you well, and hope that you have a very successful conference.

KEYNOTE SPEAKERS

THE LEGALITIES OF PLANNING

John Bousfield, President
John Bousfield Associates Ltd.
Toronto, Ontario
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It's a pleasure to be here but I was a little stunned when I read that the topic for this morning's session was, "Legalities of Planning". After all, I stand before you (a)as a consultant and (b) from Toronto - probably the most sinister combination you can imagine. I wondered why I would be included in such a panel but it occurred to me somebody had to be here to demonstrate need. No doubt that's my role. I thought it might be helpful to you to hear how the Ontario Municipal Board has affected planning practice in Ontario.

By way of background let me give you a little bit of the Ontario Municipal Board history. It was established in 1932 and I gather, somewhat like the Nova Scotia Board, was a putting together of a number of other administrative activities headed up by other committees and commissions. Its initial functions in those Depression years were essentially financial. It had some hangovers from supervision of railways but among other things, it picked up the supervision to the extent it was necessary for zoning. In those days we had zoning but we didn't have planning. Maybe that's the way it should be! Zoning was under the Municipal Act, so as a result of that sort of happenstance when there came to be a Planning Act in Ontario in 1946, it was quite natural that all appeals of a planning nature went to the Municipal Board as well.

The Ontario Municipal Board deals with a number of things: municipal boundaries, amalgamations, ward boundaries, and electoral wards within municipalities. As I indicated, it has a lot of supervisory functions regarding municipal expenditures and debentures, particularly expenditures which extend beyond the term of a municipal council. The Ontario Municipal Board is the final level of appeal on assessment. Under the heading of 'Planning Approvals' everything can be appealed to the Ontario Municipal Board, not just Official Plan Amendments but the Official Plans themselves, all Zoning By-laws and Amendments, Redevelopment Area By-laws, Site Plan By-laws, Subdivision Plans, Severances, and Minor Variances. Everything of a planning nature can be appealed to the Ontario Municipal Board and I'll get to that later. That fact is the thing that has made the Ontario Municipal Board the central focus of municipal planning in Ontario.

The Ontario Municipal Board has thirty-two members, all of them retained full-time. There is a staff of about fifty. The members are variously: lawyers, accountants, engineers, architects, businessmen - there's one planner! The Ontario Municipal Board's posture is that they have no expertise, but don't let that fool you. Some of those members have been sitting on that Board for twenty years and they've been writing decisions and listening to all the best lawyers and all the best evidence all those years. Believe me, they have the expertise. They know a lot more about planning than all of us have ever known! The Ontario Municipal Board is the best known of all the Ontario provincial tribunals, largely due to its role in municipal planning and I think it's fair to say that it enjoys an extremely high reputation in the province for its impartiality, its good judgement (except in a couple of cases I can name), its patience with its witnesses. It's very, very highly regarded by the people who come before it - ratepayers, municipalities, developers, and the professional participants. I don't say that it's universally highly regarded, but the generality is, I can say very safely, it is an extremely highly regarded body.

There's one group not attracted to the Ontario Municipal Board and that is the academics and the theorists because (and this is cronic in Ontario) every month or two we conduct another review of our Planning Act - it's a cottage industry in the province! Everyone who is appointed to a review of a commission always concludes that the Ontario Municipal Board is really the appointed body of a tenuous accountability that reports through the Attorney-General's Department. It is not the body that should upset the decisions of democratically elected councils and they always recommend that the Ontario Municipal Board be abolished; at least insofar as the supervision and making rulings on planning matters is concerned. Such recommendations always bring howls of protest by the public, by the development industry and by the municipalities and the Ontario Municipal Board always carries on and protuberantly stronger than ever. As I say, it's the very centre now of planning in Ontario.

The Board Hearings have become the testing ground for plans and for planners. Reputations are made and they're unmade in the witness box as in no other place. This reputation in this position took many years to build. In the 1950's, not many cases went to the Board, but over the years, more and more and a higher and higher percentage of controversial applications have found their way to the Municipal Board. There are a number of theories as to why that has taken place. One of them is that over the twenty year period, the Ministry of Municipal Affairs in Ontario has backed further and further away from involvement in municipal planning. That's in part a reflection of the fact that there have been more and more, larger and better staffed municipal agencies which have the effect of minimizing over time, the role of the Ministry. What that has left is a kind of a 'policy and practice guiding light' at the top of the whole planning hierarchy and I think almost instinctfully, it is felt to have filled a kind of need for a central keystone in planning arts in the Province. To a great degree, that's being filled by the Ontario Municipal Board.

The Chairman of the Ontario Municipal Board, like your Municipal Board, has very strict rules as to notice. Sometimes one, sometimes two, sometimes three members sit, witnesses are sworn and subpoened and the Board can order the production of documents ahead of time. The proceedings are adversary in type, which means that evidence is subject to cross-examination. Its written decisions can usually award costs. It can rule out hearings if it thinks the objections are vexatious or just intended for delay but the Board seldom does because its posture is almost to lean over backwards to make sure that everybody gets a hearing - even to the point where they listen to a great deal of repetitive evidence.

The Ontario Municipal Board hires no advisors - it makes its decisions strictly on the basis of the evidence that's before it. However, the Board members are human, of course, and naturally their experience and their bias has to show up in some ways in their decisions.

Hearings can be lengthy. There is something in Ontario, as you probably know, called Regional Planning. It was thought to be a good thing. It's less clear now, but it does result in, at least, very lengthy hearings. The one for Ottawa-Carleton extended over two years and two Board members sat for most of that time. The Toronto Central Area Plan Hearing lasted for about a year and a half.

There's been a change in the kind of evidence presented. In the early days, the emphasis was on opinion evidence from qualified practitioners. Now the evidence comes from specialists in every field and because we've had an orgy of municipal planning in Ontario over the last ten or fifteen years and all kind of policy documents around, more and more the Hearings of the Board depend on witnesses combing through these documents looking for a paragraph here, and a page there, that gives them comfort, and one tries to build a good policy basis for one's evidence. You've all written such policy papers and know perfectly well that while you're finding comfort from one paragraph the guy on the other side is reading the next paragraph and he's going to get comfort from it. Such is the nature of the planning approach.

Some consequences that come about in the practice of planning in Ontario is because of the Municipal Board. Because of its central role, a core of specialist practitioners has evolved and all of them are experienced professionals. Considering the volume of work, it's a very small group. All the principal actors are very well known to one another. Sometimes they work with each other, sometimes they're against.

Because Ontario Municipal Board Hearings are a legal fight and a legalforum, the first and foremost among the practitioners, very much the stars, are the lawyers. Most of the large cases in Ontario will be divided among twenty to twenty-five top lawyers from about twelve firms. Almost all of those twelve firms are Toronto based. Similarly, among consultant planners, about fifteen individuals do most of the major hearings and another ten to fifteen are kept quite busy doing all kinds of hearing work. There are some whose practice consists almost entirely of work leading up to and at Ontario Municipal Board Hearings. They, in turn, keep a small army of freelancers at work preparing exhibits and research. So it's fair to say that without the Ontario Municipal Board, many of the small firms wouldn't exist and the larger firms would be much smaller - so it's an ill wind you might say about hearings in Ontario.

The witnesses are expected to be very thorough in preparation, and able to think on their feet. Most importantly, the test is to be able to stand up to cross-examination and the ones that do the work on the big hearings turn out to be the ones who seem to be able to survive cross-examination best.

In the developing municipalities, particularly in the metropolitan areas, it's usually one or two staff members who take all the hearings. That's almost never the Planning Commissioner for two reasons: (1) the Planning Director or Commissioner almost never has the time for the preparation that is necessary, and (2) you must be prepared in every detail if you're going to be subject to cross-examination. The municipality and the man himself really can't afford to be in this position if he hasn't had time to prepare. He can't be in a position where he's going to get hammered in cross-examination because one really can be humiliated - the position isn't such that you can take humiliation; therefore, very few Planning Commissioners want to be exposed to that and they shouldn't be, in my judgement.

At the provincial level there's seldom participation from the Ministry. There's one consistant performer however, and he's from the Ministry of Food and Agriculture. He shows up whenever the preservation of high classification farmland is the issue.

Finally, there are about twenty-five or thirty environmentalists, appraisers, traffic engineers, noise consultants, development engineers, architects, landscape architects, economic analysts financial consultants, market analysts, etc. who will be called upon whenever the particulars of hearing a case dictate.

Thus, in total, there are about one hundred people or more who in various combinations, make significant parts of their income because of the Ontario Municipal Board. In the process, that group of one hundred have very much to do with what happens and doesn't happen in planning development throughout Ontario.

In summary, let me say what I think the existance of the Ontario Municipal Board has meant to planning in Ontario. First and foremost, I think it has given planning a credibility perhaps not otherwise deserved. It gives an avenue of appeal on every aspect of planning - nothing is left out. There's a fair hearing where anyone with a legitimate interest would be fully heard. I think that is the thing that gives credibility because planning in Ontario (and I presume like everywhere else) is a process which interferes with rights and ambitions for reasons which are not always clear, at least to the layman, and in ways which are not always consistent with an impact that is not always with equal weight.

Secondly, I think the Ontario Municipal Board has brought a degree of discipline to Ontario among the planning professionals and councils because whatever you do and whenever you do it, you can be sure that someone whose interests you're affecting can always call you to account and your reasons can always be subject to cross-examination. I think that everybody has to be more circumspect, a little more reasonable, and a little more disciplined than they might otherwise be.

Thirdly, it has made planning much more multi-disciplinary. The hearings have grown more specialized. We've had more environmentalists, traffic engineers, architects, landscape architects, economists all brought into place. It's the planners per force that have had to work much more closely with these people, giving a kind of a perspective on the totality of what's involved. They can see planning not necessarily as the central piece but one part of the total puzzle.

Finally, and very self-servingly, may I conclude by saying as I have said before that in Ontario the Municipal Board has meant a tremendous amount of work for people like me. Among Ontario planners, the Twenty-third Psalm begins, "The Board is my shepherd...!".

* * * * *

QUESTION: With what matters does the Ontario Municipal Board deal?

RESPONSE: The Ontario Municipal Board deals only with matters under the Ontario Planning Act, which as you probably know deals strictly with how municipalities plan. When the Province of Ontario plans, it's under other legislation and that does not come under the Board's jurisdiction.

QUESTION: Is there a review process for Provincial planning?

RESPONSE: There is no review process for Provincial planning, as and when Provincial planning takes place, and of course, a provincially-appointed body couldn't be in a position to review Cabinet decisions effectively, so I really can't suggest how that might take place. In fact, the problem has been solved by the fact that the Province doesn't do much planning.

QUESTION:	One of the criticisms I heard about the Ontario Municipal Board when I was leaving Ontario about ten years ago, was the cost of going to an Ontario Municipal Board Hearing for a layperson for relatively a minor matter. Has the Board developed any mechanism for dealing with these things without undue cost and with reasonable speed?
RESPONSE:	To my knowledge, it hasn't been solved. The Board can award costs and during the 1960's when a gentleman named Al Kennedy was the Chairman, there were some famous cases when he awarded costs in favour of Ratepayers' Groups who were opposing at that time when highrise apartments were the issue. He did that a couple of times but following his term as Chairman, I can't think of a case where costs were awarded. It's a very serious problem.

PLANNING LAW IN NOVA SCOTIA 1970-82 - AN OVERVIEW

Robert H. Blois, Q.C., Chairman
Nova Scotia Municipal Board
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The Planning Act was passed by the Legislature in 1969, but did not come into effect until March 1, 1970. It amended, consolidated and repealed Chapter 308 of The Revised Statutes of Nova Scotia, 1967, The Town Planning Act. The new Act was substantially different from the old Act and no doubt its introduction came as a shock to those who had grown accustomed to the terms of the old Act. The old Act authorized municipal councils to establish "Town Planning Boards" made up of the mayor or warden and six other persons, three of whom had to be members of the council. These boards were empowered to prepare an "Official Town Plan" and a "Zoning By-law". The Town Planning Boards were authorized to appoint community planners, consultants, etc. as necessary. A council, with the approval of the Minister, had power to prepare a plan or plans for development to be known as "The Official Town Plan". Councils were prevented from undertaking public improvements inconsistent with the adopted Official Plan. Where a Board was created under the old Act, the powers and duties of the Council with respect to subdivisions were delegated to the Board. The only appeal from the Board's decision was to the Minister by a town or city within a prescribed distance from the subdivision (2 or 3 miles). The Act set out a procedure for establishing Metropolitan Area Commissions for all parts of the province except for the Cities of Halifax and Dartmouth and the Municipality of the County of Halifax which were to operate under a nine-member commission comprising two councillors and one ratepayer from each of the three municipalities. These commissions were authorized to advise and assist the participating councils.

Under the Town Planning Act, an appeal was provided for a person who was dissatisfied with the decision of a municipal official. This appeal was to the council of the municipality.

Under the Planning Act, provision was made for appeals to the Provincial Planning Appeal Board with respect to a number of decisions, (e.g., the granting or refusal to grant a Regional Development Permit (Section 7(2)); the approval by a Council of a specific development not otherwise permitted by the Zoning By-law (Section 35(1)); the amendment, revision or repeal of a Zoning By-law (Section 38(4)); the refusal to approve an amendment to a Zoning By-law (Section 39(4)); the termination of a non-conforming use (Section 48(4)); and the approval or refusal to approve a plan of subdivision (Section 49(7)).

Under The Planning Act, the Governor-in-Council may designate planning regions which shall contain "a statement of policies for the orderly economic and physical development of the region" and the Regional Plan or the Minister may require a municipality to prepare a Municipal Development Plan for all or part of that municipality.

The Planning Act in Part V sets forth transitional provisions whereby Official Town Plans and Zoning By-laws passed under the former Town Planning Act which were in force immediately before the coming into force of The Planning Act are to continue in force except where they are inconsistent with a Regional Plan for a period of two years or "for a further period of two years, or such longer period as the Minister from time-to-time orders, from the date the municipality begins to prepare a Municipal Development Plan". There would appear to be some Official Town Plans and Zoning By-laws still in effect in some municipalities by virtue of these provisions and orders by the Minister.

From my perspective, I would like to see every municipality adopt a Municipal Development Plan with an accompanying Zoning By-law as soon as possible. Unfortunately, there are some municipalities that in my view have an out-of-date Official Plan and Zoning By-law that are not now and never were in keeping with their Official Plan, or no Official Plan or Municipal Development Plan. As difficult as the planning process is at times, it would be much less so if appropriate Municipal Development Plans were adopted. One thing that creates good planning is to endeavour to have some certainty in the planning process which I believe would be better achieved with the adoption of Municipal Development Plans. Where there are no Municipal Development Plans in effect, councils are likely to develop an ad hoc attitude to planning which may not be planning at all. When a plan has been adopted and approved, I believe it is important and essential to instill confidence in the public mind that the plan will be preserved so that the public can feel confident that the plan can be depended upon and followed.

Someone might well ask what was wrong with the old Town Planning Act which had been in effect for a great many years. I will not be so presumptuous as to say what I think was wrong but I will list some of the five ways in the opinion of Professor Reginald

Lang, the old Act was weak, namely:

1. Its failure to provide the necessary framework for effective Regional Planning.
2. Similarly, the absence of a framework within which to formulate realistic Municipal Development Plans.
3. The use of zoning and other regulatory powers without reference to overall policies and plans.
4. Confusion between provincial and municipal powers under the Act.
5. Insufficient, and not enough opportunity for public involvement in planning.

No doubt many of you can list at least ten ways in which The Planning Act is weak.

I quote Reg Lang, the first Director of Community Planning in Nova Scotia employed by the Department of Municipal Affairs between 1965 and 1971, because he acted as study director for the Town Planning Act Review which resulted in The Planning Act of 1969. Mr. Lang is presently a Professor of Environmental Law at York University. One of his claims to fame arises out of the fact that he was the Appellant in the first reported decision of the Planning Appeal Board. The appeal involved a decision to rezone. Mr. Lang conducted the appeal without the aid of a solicitor and despite the fact that there were two competent solicitors opposing him who raised a number of technical objections, Professor Lang won his case. However, I understand he was quite frustrated with some of the legal roadblocks thrown in his path.

You may be interested to know that after the new Act came into force but prior to the appointment of the members of the Planning Appeal Board in 1970, a number of appeals had already commenced. You can, therefore, appreciate the initial problems I had with setting up the Board and establishing some sort of procedure to deal with the appeals already on hand and appeals subsequently filed. I am afraid that the Planning Appeal Board was behind schedule when it started to function and seldom, if ever, was it able to catch up!

In 1973 I delivered a paper to a Planning Conference held at the Faculty of Law, Dalhousie University, and at that time I stated that I did not pretend to be a planning expert, although I considered that I had learned a great deal about planning in the three year period I had then served as Chairman of the Provinical Planning Appeal Board from listening to planning experts who had testified at our hearings. I also, for educational purposes and "light reading", had read some of the reported decisions of the Ontario Municipal Board which I sometimes found helpful despite the differences between the Ontario and Nova Scotia planning legislation. Here it is nine years later and I still do not pretend to be a planning expert, nor in my opinion, should I be so qualified. There are those who believe that a Board hearing planning appeals should be made up entirely of planners or have at least one member so qualified. At the risk of antagonizing planners, it is my view that they should concentrate on what they are trained to do, that is, planning and let the judicial or quasi judicial function be handled by others.

I agree with the comments made by the late J.A. Kennedy, Q.C., who retired in 1973 as the Chairman of the Ontario Municipal Board, at a lecture to a group of lawyers when he stated that, "It is almost trite to say the technologist should only have the right to advise - never to decide". Also, "Our whole system of jurisprudence is based on a method whereby the technical and professional opinions upon which judgements are based must be expressed in the witness box where they are subject to cross-examination."

Mr. Kennedy also had something to say about whether or not the Ontario Municipal Board should employ planners to advise the Board. I again quote him as saying: "The suggestion is also made that the Board should employ a professional planning staff to give advice after due study. It must be remembered that the Board is a tribunal and in contentious cases such planners who have expressed opinions would have to appear as witnesses at the hearing, give those opinions under oath and submit to cross-examination. In the respectful opinion of the author, the witness in the box should not be an employee of the judge on the bench - certainly not if he is giving opinion evidence. The dangers are too great. For example, if a promotion or salary increase were under consideration would he, even unconsciously, be inclined to support opinions expressed by the tribunal in a previous judgement? The dangers are great indeed! Independent witnesses are always to be preferred."

It is interesting to me that The Planning Act of 1969 designed to improve the defects of the old Town Planning Act is itself under review which no doubt will shortly result in some substantial changes which hopefully will also be substantial improvements. In other words, planning obviously is an on-going or evolving process which must be periodically reviewed.

In 1973, I stated that "one of the things that I learned is that planning is not an exact science and that even experts can disagree on what is good or bad planning in any given situation". I see no reason to change my views in that regard. Planners often talk about "planning principles" and I must confess that I have sometimes used expressions such as "the Council's decision to re-zone Black Acre from Residential (R-1) to Commercial (C-2) is contrary to good planning principles". I once heard Professor Graham Murray of the Dalhousie Law School who is a former President of the Community Planning Association of Canada and who has studied planning and planning law for many years, say that he has never seen a list of the so-called "planning principles" to which reference is frequently made.

In my 1973 paper on the Provincial Planning Appeal Board, I predicted that such a Board "will some day in the not too distant future be staffed by full-time members". I may have been wrong in the timing but today, nine years later, we have a full-time Municipal Board and I am pleased to be a member of that Board despite the fact that many of our decisions will, of necessity, involve matters of considerable public interest and obviously our decisions will not likely satisfy all points-of-view.

The Municipal Board under the Municipal Board Act has been given jurisdiction to deal with a number of important matters such as assessment appeals and municipal boundary matters in addition to the hearing of appeals under The Planning Act. Although the Municipal Board has only been in existence for about five months, it is apparent to me that the Board will be very busy indeed. To hear expeditiously all of the appeals and applications, the Board will at times sit as a one member Board and indeed we already do just that in assessment appeals and shortly it will be done in planning appeals. The Board has a Planning Appeal Hearing scheduled this month where only one member will sit.

In 1973, I observed that with the implementation of Municipal Development Plans, "more order should emerge in the field of planning, but there will still be many and difficult problems, some of which may have to be aired before the Board". One of my legal friends then employed as a solicitor for a municipality had suggested to me that with the introduction of a Municipal Development Plan by a municipality, there would not likely be any more planning appeals arising from decisions made by the Council of that municipality on the theory that the plan would be clear and unambiguous and because the Council was not supposed to make decisions inconsistent with its Municipal Development Plan no situation would likely arise which would cause anyone to commence an appeal to the Board. At the time, I had some doubts about my friend's prediction and my doubts proved to be accurate as there have been a considerable number of appeals from the decisions of the Councils which had adopted Municipal Development Plans. Some of these appeals were quite complex and often involved the approval by a Council of a specific development under the so-called 'Contract Zoning' process where the Board is obliged to weigh the evidence in light of the objectives and policies set out in the Municipal Development Plan and then decide the issue, not as hitherto under the "the best interests of the municipality" test but rather on the basis of whether the proposed development met the intent of the Municipal Development Plan.

I have already mentioned that the Board will shortly sit with only one member for a Planning Appeal Hearing. As you are no doubt aware, the Provincial Planning Appeal Board consisted of five members, all of whom were entitled to sit on an appeal. I am pleased that the Municipal Board Act, in Section 16 provides that the Chairman, "shall prescribe the number of members to attend the hearing of an application, appeal or other matter before the Board, and shall prescribe the quorum with respect to such application, appeal or other matter". I am pleased because I always felt that five members sitting at one time was at least two too many. I hope to exercise my perogative as Chairman to designate one member to sit on some occasions but in some matters such as annexation cases, I would certainly want to have a three-member Board sit. The time has probably arrived where we should conduct most appeals with one member in order to handle our work load. My understanding of the Ontario Municipal Board is that while one member only sits on hearings, that member must file a report with the Ontario Municipal Board which then adopts the report as its decision.

Again referring to 1973, I then stated that the Provincial Planning Appeal Board could only function properly if it was free of governmental interference especially from the Department of Municipal Affairs. I said in 1973 and I repeated myself at a planning seminar held in 1977 that the Provincial Planning Appeal Board functioned without any interference from the government. I am pleased to say that the Municipal Board has operated as a completely independent body, although it has received the utmost support and assistance when required from the Department of Municipal Affairs.

In 1977, I stated that the Provincial Planning Appeal Board endeavoured to meet with the parties to an appeal or their solicitors prior to the actual hearing date on a "without prejudice" basis in order to encourage the parties prior to the hearing to exchange the names of expert witnesses and to make available to all parties, copies of specialized reports to be introduced in evidence at the Hearing so that no one at the Hearing would be taken completely by surprise to the extent that they might be entitled to an adjournment in order to examine these reports. This informal procedure commonly called a 'Pre-hearing Conference' has been followed with some degree of success and I would hope to continue this practice with the Municipal Board. These Pre-hearing Conferences help to narrow down the issues and eliminate what is not relevant and sets the stage for a fair and open hearing. Another purpose of the Pre-hearing Conference is to flush out at this stage, any possible jurisdictional problem. If there is, one of the parties should then realize that when the Hearing commences, the Board will hear argument about its jurisdiction before hearing any evidence on the merits of the appeal. The Board after hearing argument will either give an immediate decision on the matter or will reserve its decision and hear evidence on the merits and then render one decision where the jurisdictional matter is dealt with as well as the real issue on the merits. Usually the parties prefer to have the jurisdictional dispute settled before the evidence on the merits is heard and I prefer this approach myself. Obviously, if the Board decides it doesn't have jurisdiction to hear the appeal, then it is a waste of time and energy to hear evidence on the merits.

On the subject of how a Planning Appeal Hearing should be conducted by the Board, I'll volunteer a few personal comments. Firstly, under The Planning Act, and the present Regulations of the Provincial Planning Appeal Board which are still in effect, I believe the Hearing should not be so strictly controlled that witnesses and non-lawyers feel that they are in a court of law, although at the same time, I feel that some reasonable degree of formality must be maintained. The approved Provincial Planning Appeal Board rules provide that, "hearings may be conducted in an informal manner and need not follow the strict rules of practice and procedure required by the Court". It is difficult in my opinion to be too informal and possibly some Hearings in the past have been too formal for some lay persons who might be intimidated from giving their evidence because of the fear of cross-examination which at times may be very upsetting to a witness but which in my view is a necessary part of the Hearing procedure.

I have no doubt, based on my built-in bias as a lawyer and from what has transpired at Planning Appeal Board Hearings over the years, that lawyers have an important and often a vital role to play. Since Planning Appeal Hearings are of an adversary nature and the stage is a quasi-judicial one, then a trained lawyer is able to present his client's case before the Board in an orderly and intelligent manner which not only advances his client's position but is helpful to the Board. Many laymen who are themselves very competent people in their own area of expertise, are often sadly lacking in their ability to marshall their facts, evidence and law for presentation to the Board. There are, of course exceptions, but they are rare.

Having stated my preference for having lawyers involved in the planning appeal process, let me state clearly that if a person either as an Appellant or Respondent wishes to appear at a Hearing without counsel, he will be given more than an ample opportunity of being heard. The greatest difficulty a lay person is likely to have is with regard to the presentation of 'hearsay evidence'. If he persists in this regard, even if counsel for the other parties does not take objection, the Board itself will at times be obliged to curtail 'hearsay evidence' which is considered not very reliable evidence. Evidence that is not relevant is another difficulty encountered by most laymen.

I would like to briefly comment on the use of the so-called and unfortunately by some lawyers, "expert witness" in hearings before the Board. While everyone who attends a hearing and gives evidence under oath and is subject to cross-examination is entitled to have the Board weigh his evidence, it is clear to me that everyone's evidence does not have the same weight. I feel that in most planning hearing cases since the issues are of a planning nature, either it is good, bad, or somewhere in between or the planning issue is whether or not the Municipal Development Plan is offended, that the greatest weight should be given to the trained and qualified planner. This principle was established by the Provincial Planning Appeal Board in the so-called Lord Nelson Hotel Case where the Board indicated that the phrase from The Planning Act which reads, "the best interests of the municipality" is to be interpreted in the light of planning considerations and that the main guidance is to be obtained from professional, qualified planners in various fields, such as urban economics, urban design, city planning, etc.

In the Halifax area there has grown up a small group of highly competent persons who are regarded as experts in the field of planning and these experts are usually called upon to give evidence concerning major appeals involving rezoning matters or lately appeals from a Council's decision in approving a so-called contract zone development. These experts are very familiar with the objectives and policies of the Municipal Development Plans and their evidence is directed to pointing out to the Board in what respects the proposed development either meets the intent of the Municipal Development Plan or does not do so.

Since many of you are planners and employed by municipalities, you are quite likely to be called upon to give evidence before the Board, either to support the decision given by your Council in those instances where your staff report has recommended the decision taken by the Council or as a subpoened witness in those cases where your recommendation has been rejected by your Council. In both cases, I would suggest to you that your duty is to give your evidence candidly and in accord with your opinion about the issue at hand. I may say that as a member of the Municipal Board I expect to hear the evidence of the planner whose report has been given to the Council and if this planner is not called as a witness by one of the parties, I would probably have the Board under its powers, order this person to testify and present his report which I believe is essential so that the Board may have the benefit of his expert opinion.

I know that it is sometimes awkward for a planner to give his evidence, even though under subpoena in those cases where the Council has not followed his recommendation. This problem was given serious consideration by me when the Provincial Planning Appeal Board came into being. The first Secretary of that Board was a qualified planner, the late John Legate, who during his professional years had been the Chief Planner for the City of Sarnia. He had extensive experience as a witness before the Ontario Municipal Board and was strongly of the view that a professional planner had a duty when called to give evidence to do so in accordance with the dictates of his conscience, not as his employer would like him to do. It is my personal view, which is not universally shared, that the municipality involved in a Planning Appeal Hearing should instruct its staff to appear and defend the decision taken by the Council.

If time had permitted, I would have liked to comment on a number of matters which may be left to another day. One subject of interest is the role of the Director of Community Planning in the planning appeal process. Another matter is the question sometimes raised by municipalities as the proliferation of frivolous appeals and means whereby this type of appeal could be curtailed. In my opinion there have been very few if indeed any appeals which I could clearly say were 'frivolous'. By frivolous I mean "having no reasonable ground" as defined by the Oxford Dictionary.

I have not tried to outline what might be considered precedent setting decisions of the Board because I understand that Ted Wickwire will make some observations in that regard.

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The questions and responses below followed presentation by Mr. Bousfield and Mr. Blois.

QUESTION:	Can you comment on the time involved in scheduling appeals and receiving decisions?
RESPONSE:	(Blois) Certainly, the Board is well aware of complaints that have been directed and properly so against the Board for (a) not getting the hearing on at an early date and (b) after the hearing has been held, not rendering its decision soon enough.

We're addressing this matter and I can assure you I have a tiger in the presence of one Vice-Chairman Lawrence, who has a schedule in her office which has a target date for the following decisions in a, b, c, etc. and I'm sure where humanly possible for us to keep on target we will do so - the Vice-Chairman is a very persuasive lady!

(Bousfield) It is very much a part of the equation - if everybody could get to the Board in two days and get a hearing in three days, the thought is that there would be many more hearings. The Board would have to increase its capacity to produce decisions at this rate. The fact that it takes you time is very much a part of the equation, and it leads to a lot of people settling their differences because both sides realize it's going to take a lot of time and money. The time required to get to the Board isn't entirely a negative factor.

QUESTION: What is the role of a Council's solicitor?

RESPONSE: (Blois) Quite frequently at our hearings where the professional staff has given strong opinions contrary to the decision under appeal, and council has ignored it, the solicitor has to scramble around. He may be able to bring in an expert from somewhere else - that's his problem. It's the solicitor's duty to present the council's position and defend council's decision even against its own staff. This is kind of a tricky process but that's the way it works.

QUESTION: What constitutes an "expert planner".

RESPONSE: (Bousfield) For the purposes of hearing, this is probably trite, He is one whose qualifications are accepted, and who would stand examination and cross-examination because qualifications can be examined by opposing counsel. It becomes clear that qualifications in one hearing aren't necessarily adequate for qualifications at the next hearing which turns on a different matter.

QUESTION: Can you comment on the awarding of costs for appeals?

RESPONSE: (Blois) I don't see that it's a weakness not be be able to do so. If it were available to the Board, I would personally hesitate to use it. I think it would intimidate some Ratepayers' Groups or others who want to come forward if they thought that if unsuccessful they might be nailed with horrendous costs. I feel that the Legislature up until this time has taken this view and carefully precluded the Board from awarding costs. It would be difficult to apply - certainly I wouldn't want to apply it on the usual rule followed by courts, and that is, the successful party is awarded the cost.

(Bousfield) As regards the Ontario situation, that is a very difficult matter for me to address. My impression is that the ability to award costs hasn't been a significant factor insofar as Ontario Municipal Board credibility is concerned. Probably the most important reason that the Board so seldom awards costs may well be that not many people know the Board can. The threat of awarding costs is not talked about much in Ontario planning circles in my experience.

RESPONSIBLE/RESPONSIVE PLANNING

Dr. Jacqueline Wolfe
University of Guelph
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I'm sure you are all familiar with the old chestnut: those that can't - teach: those that can't teach, teach teachers how to teach - and so on.

A variation of that, which flatters you, but not me, might go: those that can - plan; those that can't plan, teach planners and those that can't teach planners, theorize and give advice about planning.

I trust that I'm not speaking to you today from a purely theoretical perspective, but also from some practical experience.

First to sketch in a little background of a "come from away", and I confess to it, another Ontarian: as a Geographer, I've been at the University of Guelph since 1967. Since 1976 I've been involved with a special unit, the Rural Development Outreach Project. Its mandate (it's packing up now, and the School of Rural Planning and Rural Development has risen phoenix-like from its ashes) was, and I quote: "to explore ways in which the University can be more responsive to the needs of rural people".

Essentially, this demanded that faculty and students (not all, just a few more than before) work on problems identified as being significant by rural people, rural interest groups, and those in government responsible for maintaining and improving the quality of rural life. It called upon faculty and students to work directly with these people, and therefore do the research and educate in ways vastly different from those to which they were trained and accustomed.

Incidentally, students were far more receptive and capable than most faculty to do this.

Much of our work, and my own in particular, has been largely with policy development and plan making at levels from the provincial to the local. And at the local level it has focussed upon rural agricultural areas, remote settlements and native communities.

From these experiences have arisen concerns, which I wish to share with you, over what we do, in terms of policy and plan making, and how we do it. I have been especially involved with the conditions under which, and the ways in which people being planned for can be effectively planned with.

This work, with planning agencies, reeves, councils, native chiefs and bands, local groups, upper level bureaucrats, has afforded me a special opportunity to look at the range of planning activities from several perspectives: that of the planning professional like yourselves; that of the elected official; and that of the public - fully recognizing that more often than not there are many publics and that we are well advised to accept this reality, rather than view it as a problem. And, unlike those of you who are always in the thick of things, I have the luxury to draw back and regain the perspective of theorist and critic who analyzes and comments upon a situation objectively (or, at least as objectively as possible).

Responsible/Responsive Planning

It is with these perspectives in mind that I wish to raise some questions with you about what is responsible planning and particularly what is responsible, responsive planning. Some aspects I'll deal with directly, others only by implication.

Since we are all planners, it seems reasonable to assume that we share a common belief that some planning is better than no planning. The strength of this belief will vary amongst us, depending on personal and political biases, place of training, and more likely than not, the length of time spent in the profession. Indeed a cynic might propose the following "law": that the strength of belief in planning is inversely proportional to the length of time spent in the profession!

Surely, though, we do share the view that what we do - making policy and plans, developing allocative mechanisms, regulations or controls - will, if well designed and carefully implemented, bring about a better future than would emerge if we had not done our job.

But how do we know whether our belief is justified? How do we know if we are meeting with success?

Ideally, we would measure success by the extent to which our planning activities alleviated and resolved the problems which called them forth. For example, have our policies in Prince Edward Island to restrict non-resident (foreign) land purchase effectively reduced its extent? In Ontario, have the Foodland Guidelines contributed directly and substantially to a reduction in losses of prime farmland?

Rather than this, if we do do final evaluations, they are more likely to deal with the extent to which internal agency objectives were achieved. Was it within budget, within time frame? If there was a public component, how many people turned up to meetings, how many filled in questionnaires? Such so-called summative evaluations measure the performance of the agency to some extent, but seldom probe further to ask: was the plan or policy well received; or most importantly - was it implemented effectively, and did it have the desired results?

As practitioners, my guess is we tend to be very practical and pragmatic. Success is: is it used, does it work? Is there or is there not dust on the plan or policy document? Are the policies applied? Does the municipality invoke the plan regularly? As realists these are our important criteria of success. And successes like these go almost unnoticed. We need to remind ourselves - and others - that we have them.

What is all too clear though, is that many people (elected officials, ordinary folk) do not draw attention to the beneficial effects of our planning efforts and do not share our favourable view of planning. Some have had bad experiences with poorly conceived and ineptly executed policies or plans. Far more are negatively influenced by the wide publicity which the more spectacular of our planning failures receive. All planning and all planners are affected by these. We all get tarred with the same brush.

Some Failures

Rather than embarrass you with Nova Scotia failures (or perhaps you're all so expert, and planning is so well organized and publicly accepted that there aren't any) let me refer to some infamous Ontario examples. They are legion: the proposed Toronto Airport and land purchase; the Townsend New Townsite in Haldimand-Norfolk, the South Cuyuga Toxic-waste Disposal Site; the Toronto Centered Region; the Niagara Escarpment Commission Plan.

What was wrong, or went wrong with these? They tend to have in common certain features of what was done and how it was done. We can highlight the grossest errors. The land purchase for a second Toronto airport - over-reaction and over-response to a perceived problem of air traffic congestion. The South Cuyuga Toxic Waste Site - an attempt to address a serious societal problem with a politically and economically expedient site selection, accompanied by almost criminal ignorance or deliberate downplay of the unsuitable site conditions, and total insensitivity to the legitimate concerns of the impacted community which was to accept the toxic wastes from across the entire urban-industrial complex of the province. The Niagara Escarpment Commission Plan - in the name of sound rational planning in society's interests, specialists (fellow geographers and planners) developed stringently protective land use policies for the length and the breadth of the Niagara Escarpment. When eventually the expert-prepared plan was revealed to the affected municipalities, the local public reaction was, not surprisingly, swift and hostile, and has remained so.

Causes of Failure

Planning failures of this kind are fundamental failures: first, to come to grips with the true nature of the problem which the plan or policy is to address and rectify. Our understanding of the problem itself is incomplete or inaccurate. Second, they are failures to identify the appropriate response to the problem. They are an over-reaction or an inadequate reaction to the problem. Third, they represent a failure to take these steps openly and publicly.

At one end of the spectrum are those failures arising from political expendency: at the other are the products of experts isolated from the real world.

To be responsibly, responsive as a planner, I submit that we need to be more thorough with the following steps in our policy and plan making, whether this is occurring at the national, provincial or municipal level.

Problem Verification

First, we need more careful problem verification. Have we really identified the problem, or any symptoms? What is its magnitude, nature, extent, intensity, likely duration, propensity to grow or diminish? Public and political perception of the problem may be at variance with its actual proportions. We have a responsibility ourselves not to exaggerate or underestimate its dimensions.

Necessity and Sufficiency

Secondly, we need to ensure that we develop an appropriate response to the problem: a response which is neither too much or too little. I suggest that we need rigorous application of two criteria, at all stages of the planning or policy making activity. The criteria area: necessity and sufficiency*. In common parlance the criterion of necessity amounts to asking, "will this address the problem or will something else do the job equally well?". The criterion of sufficiency asks, "is this enough to address the problem, or will additional measures be required?".

To use a glaring example: in the case of the proposed second Toronto Airport (and premature land purchase) the magnitude, intensity and duration of the air traffic congestion problem was over-estimated. Secondly, the proposed second airport was of itself only too sufficient, but not necessary. There were (and these have been used), alternate and more approriate ways of dealing with the problem.

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* I wish to acknowledge my colleagues from the Department of Geography, University of Guelph, Dr. Barry Schmidt and Tom Johnston whose paper, "Public Policy Assessment: Evaluating Objectives of Resource Policies" forthcoming in the Professional Geographer is the source of these ideas.

To some extent this is common sense wrapped up in elegant terminology and presented as significant concept. The fact remains, however, we don't rigorously apply these tests - we allow political pressure, public pressure, the dictates of our agency, our perceived mandate, our "expert" opinion, to divert us. We overlook the warning signals before us at the outset and around us as we proceed.

Public Involvement

How we proceed is equally critical to a successful outcome. It is unlikely that problem verification and the criteria of necessity and sufficiency can be applied without recourse to various publics along the way.

Public participation, citizen participation, public involvement, citizen involvement; community involvement, community consultation, community networking - one after the other, these have been the buzz words and by-words of the responsive planner over the last decade. Theoreticians pointed to the vital role of the public in a sound planning process. Planning schools found planning students receptive to the notion. Older, seasoned practitioners were skeptical and resistant; but we have come to accept planning as a public and as a political process. Some even talk of planners as "process professionals". Despite the time required and the costs entailed, for most of us it's now part of our "world view". Public participation is not just a necessary evil, required by law, but makes a vital contribution to responsible, responsive planning.

Public participation has become the order of the day - not simply the mandatory public meeting at which a plan or policy is presented, but increasingly elaborate programs for public involvement and consultation. Some have met with success, have been well attended, enjoyable and constructive experiences for professional and participating citizens and have contributed positively to the product, the plan, policy or site decision.

But the failures are the most memorable, even though, hopefully, they are fewer. Public apathy - no one came. Public hostility, planners - citizen confrontation. Advocacy or interest groups implacably opposed. Compromise or even reasonableness unattainable. For the planner - frustration, sometimes even fear, and a nagging doubt.

One time or another we've used all the techniques in the book, and even invented some additional ones. Questionnaires by mail-out, in local papers; public meetings, of course, but with displays, slides, presentations, a veritable "son et lumière"; open houses, the secret to avoid open confrontation; task forces, advisory groups; community networking through local groups and local leadership, maybe even kitchen or cottage meetings which were found to work so well back in Huron County, Ontario.

Here again there are questions we need to ask ourselves bluntly, and force ourselves to provide honest answers. They are not especially profound. But if rigorously applied they can contribute to a greater likelihood of success when the public at large is brought into the planning process.

Objectives

One set of questions relates to the extent to which our objectives as planners, for a public program are coincident with, or are in contrast to the purposes the public might have in participating.

Our objectives may be to educate, to inform, to generate discussion, to consult with, to obtain guidance on opinions, and, exceptionally, to bring forth a particular decision from the public.

Although the set of objectives the public may have is similar, in any specific case they may not coincide at all. We need to be aware of, and to be beware of this discrepancy. For example, the public may assume they are being solicited for opinions, when our sole purpose is to inform or educate. Further, citizens may assume that their forceful declaration of opinions and preferences will result in their inclusion in the plan or policy. This occurs despite obvious indications that public opinion is not unified, but deeply divided. Alternatively, the public or portions thereof, may see no relevant purpose to the exercise at all and simply not participate. This may or may not be apathy. It may be ignorance of the serious ramifications of the issue. Or past experience with exercises of public participation by agencies may leave people unconvinced that they are genuinely being consulted.

Another question which seems critical to me, though I have not heard many others sharing my concern, refers to the appropriateness of our methods of involving the public - the 'techniques' for input, discussion, expression of opinion or selection between alternatives which we arrange into a formalized program. A responsible planning team obviously will make some effort to time the activities when farmers are not seeding or harvesting, when fishermen are not at sea, when native people are not out on the trapline. They should take care to "translate" professional jargon into the language of the people. This can present an immediate challenge. We have recently been working with small remote bands of Cree and Ojibway in North Western Ontario who have no word for planning, for example, let alone the more specialized terminology.

But - we select the techniques and organize the programs. And we tend to select those, not surprisingly, that we feel comfortable with, rather than taking as our point of departure - what are the ways in which the community feels comfortable participating, what are their traditions, skills, ways of addressing issues, and ways of developing decision? Clearly I am strongly influenced in this concern by our experiences with the Indian Bands whose cultural traditions contrast with ours, especially in their emphasis on community concensus in decision making. But it should always be a question to ask and respond to.

I'd like to digress for a moment, and illustrate the point not with an Indian, but a Huron County, Ontario experience. From about 1973 the county has been preparing township plans as secondary plans to the County Official Plan. During plan presentation a series of up to six public meetings, so-called workshops, are held in each township (populations around 2,000 to 3,000 people) dealing with such topics as urban areas (village and hamlets), agriculture, and severances, and so on. The meetings were to inform the public, generate discussion, and to be a consultative mechanism through which the public could express opinions and from which the planner could get some policy guidance. For its time, this scheme was quite elaborate. But certain township councils and local leaders felt it to be inadequate for their needs. They recognized that people were being asked to absorb quantities of information, reflect upon it, express opinions, and give informed and rational guidance. They felt this could not be accomplished by six topical meetings.

Harking back to the day of "Radio Farm Forum", a valued experience for many rural people, they proposed holding kitchen meetings. These would be small gatherings of neighbours in a local home - something they would feel comfortable with. With some assistance from the R.D.O.P., a local organization took the initiative and set up the meetings. A planner and a township council member attended as resource people, and in their capacity as decision makers. The success of the kitchen meetings led the planning department itself to suggest that subsequent townships do something similar, which indeed they have done.

I am not pushing kitchen meetings. What I am pushing is the idea of getting councils, local organizations to take more initiative and responsibility for certain portions of a community involvement in planning process.

An extreme case of community involvement in planning is on-going in Puslinch Township, Ontario, just south of Guelph. Dissatisfaction with the formula plans from consulting firms led council and planning board to set up a special planning steering committee. The committee was charged initially with responsibility for collecting and up-dating township data, and producing detailed maps. These included farm and non-farm residences; log division; woodlands; aggregate and water resources; recreation types and land uses, and so on. With some guidance from the School of Rural Planning, sub-committees of local citizens collected the data, drew preliminary maps, and identified issues they deemed critical. Township water resources was one such. They will be sharing the information and generating discussion on the issues the sub-committees have identified with fellow citizens of the township, using their style of kitchen meetings this winter. When the new Ontario Planning Act is finally passed, the township proposes to hire a planner direct, to develop and draft their plan with them. The township has the support of the Community Planning Board, Ministry of Housing, in this venture. I might add that, while we have provided assistance, the initiatives and the work came directly from local people.

Ideally community involvement is an on-going process. The public and the elected officials are involved, with differing degrees of intensity through a formal and a community based program. The program covers most if not all agency and public objectives. It leads along from information sessions and background education to informed guidance in policy selection. It emphasizes not one but several participation methods, both formal and less formal.

Issues and Options

It often does not pan out this way. All too frequently, a policy or planning problem arises and rapidly becomes a politicized issue. Public opinion polarizes, sometimes in a single direction; more often than not divided and extreme.

Moreover, the options available for consideration may not cover a particularly broad range. For example, the policies of upper levels of government or senior ministries may already restrict the feasible alternatives.

Clearly, if the range of options is broadly based and the issues relatively non-controversial, the full spectrum of citizen involvement is in order.

The participation objectives for the agency and the involvement techniques appropriate to be objectives are severely constrained if the planning and policy options are few and an issue highly polarized. Public opinion can and does shift and crystallize suddenly. Rather than being caught unaware and being frustrated by this, a responsible planner needs to be ever vigilant concerning politicization of issues and narrowing of options. The community consultative process must be most sensitively applied as this occurs.

A point may be reached, however, at which conventional public participation techniques are, for a while at least, unproductive, even counter productive. The issue enters fully into the political realm. Competing views and competing groups battle it out with vivid media coverage, or more formally, through the politico-legal system.

The Allocative System

Finally, the system itself, the funding mechanisms, the political realities, may be such that we need to re-think our role as responsible planners. I suspect that this has a general truth which you will be all too familiar with, but let me call upon a particularly obvious example to illustrate this point.

Responsible, responsive planning takes on a special meaning when it's in the form of community planning with an Indian Band. Recently the School of Rural Planning and Development has been working with several small remote bands in Northern Ontario. Despite linguistic and cultural barriers we have been able to engage chief, council, elders, leaders in special skill areas such as trapping, and the community at large in problem and need identification, in identifying economic development prospects and in beginning to assess the potential impact of likely changes wrought internally and externally. Change may be brought about by piped water, electrification, an all-weather airstrip, a freezer plant, a sawmill, an organized craft industry.

There is a serious dilemma facing the planner: a genuine planning reality, even if the community participates effectively and priorizes its needs and identifies realistic and logical steps to take to meet the needs. The larger system of government, upon which the community is heavily dependent, distributes its capital goods in, from a local viewpoint, an unpredictable fashion. A road to this band, an airstrip to that. Next year a freezer plant. Or, the chief may exercise political leverage with the Treaty Council, with Toronto, even Ottawa, and obtain a satellite receiving disk for the community. As leader, his role is to bring back gifts to the community. But the "gifts" as I call them, whether from the bureaucracy or obtained by political influence, may not be community priority items. They may not fit into a so-called "rational planning" sequence.

Is responsible planning, in this context, planning which recognizes that sequencing according to community priorities or even sound planning principles is unlikely to occur? It must be planning which acknowledges how the system operates and seeks therefore to accommodate the changes as they occur, exploring the benefits and minimizing the negative impacts: contingency planning.

Conclusion

To review, I have sought to discuss responsible, responsive planning by looking at what we do, and how we do it. I have made some suggestions to you and looked at a few special cases. I hope you have found something within this talk of relevence to your situation, or something which sparked your interest.

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THE PLANNING ACT: AN INTRODUCTION TO THE WORKING PAPER

Ron Simpson, Director
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You are all quite aware that the Planning Act Review Committee (P.A.R.C.) toured the province, and made an exhaustive effort to leave no stone unturned in its search for observations and recommendations on planning in Nova Scotia. Further, you are aware that an 'Interim Report' was produced, and following public scrutiny of it, a 'Final Report' was produced.

I think it's fair to suggest that the P.A.R.C. recommendations received a substantial acceptance, but a lot of people, and understandably so, wanted to see those recommendations carried into a form that would more closely resemble legislation, before willing to provide final and detailed comment. It is therefore a pleasure to be able to introduce, "A Working Paper in Legislative Form".

We intend to have a final version of what we are making available to you today, through the print shop and in wide circulation within a week to ten days.

Before I get into the discussion, a word on the organization of the paper: the right-hand pages are the "Working Paper in Legislative Form", and on the left-hand pages we've provided annotation which we would hope will provide some explanation and discussion. We have tried very hard to follow the recommendations of P.A.R.C., but there are some cases where there have been some adjustments, and the annotations will provide some rationale for those adjustments.

I'd like to run quickly through what might be considered some of the highlights of the Working Paper. Ideally, you'd all have in front of you, copies of the existing Act, the P.A.R.C. Final Report, and this draft, and you'd be able to cross-reference all three to get the whole picture - I trust you'll settle for a look at the highlights.

The Working Paper, as suggested by P.A.R.C, begins with a 'Statement of Purpose', which the present Act doesn't have. The intent of it is to set out briefly the respective roles of the Province and the municipalities in planning matters. In the

the Definition Section, the Working Paper is fairly similar to the existing Act but does include some additions. The Working Paper expands, for instance, the definition of development by including any alteration in the existing grade of land. We've also included definitions for non-conforming building and non-conforming use; a definition for rural municipality, and as you no doubt expected, a single definition for subdivision.

The Administration Section is again similar to the existing Act but it includes a section for provincial cost-sharing for the preparation and administration of Municipal and Inter-municipal Planning Strategies, Land Use By-laws, Subdivision By-laws.

The Section on Provincial Planning is one of the areas which will be covered in more detail in a technical session this afternoon. As was recommended by P.A.R.C., it is an area which involves substantial change. The Working Paper reflects a general acceptance of the P.A.R.C. recommendations with several departures in detail. (For example, P.A.R.C. recommended the establishment through legislation, of an Inter-departmental Committee to advise Cabinet on the formulation of provincial land use policy. The Working Paper suggests enabling the establishment of such a Committee, rather than requiring it. In a sense this was a compromise between what P.A.R.C. was suggesting, and suggestions that we have received from other interested parties ove the last year. Likewise, the adoption of provincial land use policies is enabled in the Working Paper rather than being required. The Working Paper does not include provisions of Regional Planning in the form found in the present Act, but it does propose to retain the Halifax/Dartmouth Regional Development Plan through the proposed transitional provisions.

Based on P.A.R.C.'s recommendations, the Working Paper attempts to set out a less complicated approach to protect Provincial interests in the use of land and to provide some basic information for municipal planning. Under this scheme, the Province could adopt individual policies for a wide range of topics; for example, the protection of public water supplies, designation of Provincial Parks, or the reservation of an energy transmission corridor. Municipalities would be consulted prior to the implementation of each policy and municipal planning would be required to be consistant with Provincial policies.

The Working Paper gives the Province some regulation making authority where this is considered necessary to implement the Provincial Land Use Policy. As proposed in the Working Paper, Provincial Land Use Regulations could be administered by a Provincial Development Officer, issuing Provincial Development Permits. This would only be the case in areas where no Municipal Planning Strategies and Land Use By-laws were in effect. The consequence of this provision is that no one would have to obtain both a provincial and a municipal development permit. The Department considered the establishment of parallel provincial and municipal development control procedures which would have allowed the Province to administer its own land use regulations even in areas with Municipal Planning Strategies and Land Use By-laws. It would have lessened the need for Municipal Planning Strategies in order to carry out provincial policy statements. This dual approach was rejected for two reasons. It seemed unreasonable to ask members of the public to obtain two permits from two development officers in two different offices, perhaps miles apart, or to establish a complex permit referral system between such offices. Secondly, a two-tier approach would be less efficient and obviously more costly. So as proposed, where no Municipal Planning Strategy and Land Use By-law is in place, the Province would administer its own regulations. Where Municipal Planning Strategies and Land Use By-laws are adopted, they will comply with Provincial policy statements and regulations and there will be no need for provincial development permits. The other point that I would like to mention with regard to provincial planning is, that as proposed in the Working Paper, only the refusal by a provincial development officer to issue a Provincial Development Permit is proposed to be appealable. That's somewhat of a change from the present Act, where under a Regional Development Plan, the issuing of a permit as well as the refusal is presently appealable.

The Municipal Planning Section of the Working Paper enables municipalities to adopt Municipal Planning Strategies which are intended to replace the current Municipal Development Plans. Municipal Planning Strategies may be prepared for all or part of the municipality and councils can choose to deal with as many or few policy areas as they deem necessary. The Working Paper contains a broad range of topics that may be dealt with in a Municipal Planning Strategy. Beyond those contained in the current Act, Municipal Planning Strategies may contain policy with respect to some or all of the following: resource land, special places and viewplanes, environmental management, landscaping, subdivision, energy conservation, solar access, public participation, and private roads.

As the first step in the planning process, the Working Paper requires that a council must, by resolution, adopt a public participation program. Municipal Planning Strategies would require the approval of the Minister but the Working Paper suggests that the approval could only be withheld where, in the opinion of the Minister, the strategy contravenes a law or conflicts with provincial land use policy; or where land use controls adopted to implement the strategy can be shown to be inconsistant with policies in that strategy. As another slight change from the present Act, the Working Paper allows for the adoption of secondary planning strategies or detailed area plans. It is proposed these would be adopted as amendments to a Municipal Planning Strategy.

The Working Paper also includes a section on Inter-municipal Planning. It provides a mechanism by which municipalities may undertake joint planning exercises, should they choose to do so. Inter-municipal Planning Strategies covering any of the subjects that may be covered in a Municipal Planning Strategy, would be prepared, adopted and amended by the agreement of two or more municipal councils. Once approved, an Inter-municipal Planning Strategy would become part of the Municipal Planning Strategies of the participating units.

One thing that the Department did in putting the Working Paper together was to take all land use controls or development controls which are possible, and put these in a section called Land Use By-laws. A Land Use By-law can deal with zoning, comprehensive development districts, development agreements, and performance standards. As proposed, where a Municipal Planning Strategy proposes any control of land use, Council would have to adopt a Land Use By-law before its strategy is submitted to the Minister for approval. However, a municipality not wishing to exercise land use control would not be required to adopt a Land Use Bylaw.

In addition to things which may be regulated in a Zoning By-law currently, the Working Paper provides for Land Use By-laws for the following: regulating the location of sand and gravel pits and quarries, providing for solar access, regulating landscaping, requiring screening of outdoor storage and regulation of population density in terms of dwelling units.

The appeal provisions provided for in the Land Use By-law Section of the Working Paper are quite similar to those in the present Planning Act relating to Zoning By-laws except that the Working Paper provides the right of appeal for "a person who considers himself aggrieved", rather than the present "any interested person". Another change in this regard is that all appeal periods are fifteen days.

In the section dealing with Municipal Development Permits, I just want to point out one adjustment to the current Act. The Working Paper would require that the Development Officer provide an applicant with written reasons for refusing to issue a Municipal Development Permit.

The section dealing with Minor Variances treats these in a manner relatively similar to that used in the current Planning Act, although the Working Paper attempts to provide some additional guidance for determining whether a variance is minor. The notice requirements to property owners in the vacinity of the variance is proposed to be reduced from the current 200 feet to 100 feet.

In the Non-Conforming Uses Section, I think it's fair to suggest that in one sense, the Working Paper is tighter than the current Act, and in another sense provides more flexibility. The tighter part is, that unlike the current Planning Act, the Working Paper would not permit a change to any other use without complying with the Land Use By-law. There is greater flexibility in that the Working Paper proposes Councils be given flexibility in establishing rules for ending non-conforming uses, or non-conforming buildings and structures, in a Municipal Planning Strategy and that this be implemented by Development Agreements.

The Working Paper sets out provisionsfor Municipal and Intermunicipal Planning Advisory Committees. The role of Planning Advisory Committees, as proposed in the Working Paper, is not unlike their role in the current Act. The Working Paper also provides for setting up local area Planning Advisory Committees to advise the P.A.C. on matters pertaining to specific areas or communities within the municipality. Another change from the current Act, is that provisions are included to require Planning Advisory Committee meetings to be open to the public, and public access to the minutes of Planning Advisory Committee meetings.

District Planning Commissions are dealt with in a similar manner to the existing Act. However, we have included some provisions which would provide some guidance related to D.P.C. assets when changing a D.P.C. membership.

Subdivision is an area of substantial change from the current Act. The Working Paper suggests a single definition of 'subdivision'; basically, the creation of any new lot or lot consolidation would constitute a subdivision of land. The Working Paper, consistent with P.A.R.C. recommendations, distinguishes provincial and municipal interest in subdivision. It provides for provincial subdivision regulations which would be administered by a Provincial Development Officer. A municipality would have either Provincial Subdivision Regulations or a Municipal Subdivision By-law, but not both. A Municipal Subdivision By-law would have to include, as a minimum, the provisions of the Provincial Subdivision Regulations.

The procedures to be followed in the approval of a plan of subdivision are proposed to be the same whether a provincial or a municipal development officer are involved. The subdivision process contained in the Working Paper has three distinct steps: (1) the approval of a tentative plan, (2) the approval of the final plan of subdivision and (3) the endorsement of a plan of subdivision. As proposed, no plan of subdivision would take effect until endorsed by the Development Officer and filed in the Registry of Deeds. However, a subdivider could proceed to construct the required roads and services when the final plan of subdivision has been approved. The Working Paper also includes provisions for granting a minor variance for one lot on a plan of subdivision, and for approving private roads or streets within a subdivision. Again, the Working Paper provides for an appeal by the landowner from a Development Officer's refusal to approve a plan of subdivision.

Finally, the Working Paper includes two other sections dealing with transitional provisions and with general provisions. The transitional provisions cover the Halifax-Dartmouth Regional Development Plan; Zoning By-laws or Official Town Plans under the former Town Planning Act; and Municipal Development Plans, Zoning Bylaws and Subdivision Regulations and Bylaws under the present Act.

Those are a few highlights. We're hoping for a good response which can be used in the final preparation of the legislation which is intended to go to the Provincial Legislature during the spring session of 1983. So, I ask your indulgence. We certainly welcome your response - we need your response.

LAW UP-DATE

Ted Wickwire, Lawyer
MacInnes, Wilson, and Hallett
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In my preparations for today, I had to identify likely sources of useful, current, legal information - and I found four of these.

- Decisions of the Provincial Planning Appeal Board, now the Municipal Board. These are published annually and are readily available.
- Legislation - a new Municipal Board Act, and something called the Town of Bedford Act. This latter Act contains some planning ingredients, which might seem a peculiar place to put them, but there are planning implications there.
- The courts - particularly the trial division.
- Experience - I think one is entitled to rely on one's experience, although it is a subjective source, and one must be awfully careful in its handling.

I don't mean to hold myself out as an expert and I cautioned the persons preparing my introduction not to hold me out as an expert in Planning Law, because I'm not, and I don't know many lawyers who are. It's a special interest of mine, and I know a few others have a special interest in this matter, but I think we're lawyers first, and planning specialists second, third, or fourth. I didn't even take a course that my favourite professor at Law School, Graham Murray taught - it was called Land Use Planning, and that was a dozen years before the passage of The Planning Act. Graham and I used to have coffee and talk about football, and Graham said, "Ted, you don't have to take the course as long as you remember two things - the first, with planning, you get the Hydrostone; and the second, what you get without planning, is Spryfield!"

I'm not an expert, and I don't think you have to be an expert to handle a planning matter - I think though there are several things you have to do and one is to browse through the decisions of the tribunal before which you are appearing for the first time. In the case of Mr. Blois and his colleagues you get a very good feel for what lies ahead of you upon reading a volume or two of decisions. They're set in a very orderly way, starting with a statement of the facts, an enunciation of the issue before it (and it's invariably one in development matters), and how it meets the two tests in Section 52(2). There is discussion about the highlights of the case occasionally, discussion about the onus of proof, and then a statement as to whether the appellant has succeeded or not succeeded in discharging the onus of proof. One gets readily the flavour of the decision. That's the first thing I think a non-seasoned lawyer ought to undertake. The second thing is that he ought to have a firm familiarity with The Planning Act and with the planning framework contained therein. Thirdly, much more importantly now than before five years ago, he has to have a solid familiarity with the Municipal Development Plan for those units that have them. And finally, he must have the best damn planner he can find!

In culling through the material, the most significant development that's occurred in Nova Scotia in the last five years is the advent of the Municipal Development Plan and more particularly how the Municipal Board construes and interprets and applies the Municipal Development Plan. I'm not sure as to which of the Municipal Development Plans came on first whether it was Halifax, Dartmouth, or elsewhere, but I seem to think that maybe it was Halifax in 1978, followed shortly by Dartmouth. I do know that there are a lot in existance now, and I do know that work is being done on a lot more Municipal Development Plans.

The plan, of course, is the principal planning tool at our disposal and it seems to me absolutely vital that planners have insight as to how the plans will be applied by the Municipal Board. We lawyers are trained to give opinions in the context of how a tribunal is likely to view the matters in the event, unlikely or otherwise, that the matter gets before such a tribunal. It seems to me that planners must also take this into account in moulding your opinions for staff reports. The Board is the final adjuditory tribunal before which the matter will or may go.

The starting point for any discussion about the Municipal Development Plan has to be Section 52(2) of The Planning Act, and anyone who has ever read any of the Board's decisions, or has been involved in any of the cases, will find it very trite for me to repeat these words. The Board shall not interfere with Council's decision unless in the opinion of the Board, Council's decision cannot be reasonably said to carry out the intent of the Municipal Development Plan. The question naturally arises, "What is the intent of the Municipal Development Plan?". As we know, plans are highly complex, in some cases more so than others. We need only look at Section 13(3) of The Planning Act to perceive at a glance the wide range of matters that are to be dealt with in a Municipal Development Plan: land use, public purpose land, provision for municipal services and facilities, supply and distribtuion of water and other services, parks, playgrounds, and public open spaces, facilities for health and social services, civic and governmental buildings, programing of municipal investment in respect to public and private development, urban renewal and housing, co-ordination of public programs of the Council, and get this, any other matter related to the physical, social, or economic development of the municipality - a pretty big order! Some plans undertake the grappling of that carte blanche authorization, and really do a job on identifying policies which affect each one of these areas at the civic level.

But what does The Planning Act mean by 'intent'? As yet, the Municipal Board has not been too explicit, but then again neither have the courts been too explicit when explaining how they interpret the plan, or a will, or such a thing. The analysis however, is the same. There are three points that I want to make about the mental processes a tribunal such as the Municipal Board, or a court, goes through in the handling of a document like the Municipal Development Plan.

The Board, as will a court, will endeavour to glean the intent from a study of the whole document, not just a part, but the whole. There is no shortcut in the process. This may seem to be a mere trifling revelation to most of you, yet it's striking how often, in my own practice, I see opinions from planners that recite the objectives and policies of the plan in the report, or appended to the report, without endeavouring to ascertain how the subject development matches the overall intent of the Municipal Development Plan. In fact, I don't think I've seen one staff report which endeavours to deal with the question that ultimately is the only question that the Municipal Board has to answer.

It's so important to deal with the whole document, because I know in the case of the Halifax Municipal Development Plan there are neat little clues to the interpretation to that document which simply don't show up on staff reports when it's being dealt with by Council. I don't think you can reasonably expect councils anywhere to be familiar with nuances that are found in Municipal Development Plans. I don't want to deal at any particular length with the Halifax Municipal Development Plan, which I consider an excellent working document, but there are little things like this: there is a primacy of certain policy sets, and certain are subordinate in various circumstances; there is a role about 'shall' and 'should'; there is a statement that certain parts of the plan are to serve as the basis for decision making within a certain geographical segment. These are the kinds of things that don't often surface in staff reports, and it seems they would be particularly helpful to a councillor: they won't miss the attention of the Municipal Board. In sum, it seems to me that the tendency of planners, or those preparing staff reports when considering development proposals, is not to apply the same test that the Board ultimately will, and that their opinions suffer repercussions accordingly.

Now, I'm going to speak some law. The jurisprudential basis for what I've just said is found in the Canterbury Case. It's the first case in which I've found it. It was not the first case before the former Planning Appeal Board to deal with the interpretation of a Municipal Development Plan, but I think probably it was the longest, and it may have been the most notorious case. All the legal focus was brought to bear on the issue of the interpretation of that document at that Hearing. I just wanted to mention as I indicated earlier, that the Board didn't take too much time in its verbal exposition of the rules that I've just indicated to you. I'd now like to take you to Chief Justice Cowan's decision. Chief Justice Cowan, in the summer of 1981, was called upon to review the Provincial Planning Appeal Board's decision. As I've indicated, the Board's decision was attacked by any number of plaintiffs, and one of the primary focusses was how the Board handled the matter of interpretation of this document. Here's how Chief Justice Cowan dealt with the matter on page 32 of the decision:

> "Counsel took issue with the use of the phrase 'on the whole'. I take that phrase to mean that the proposed development is to be considered in relation to the Municipal

> Development Plan as a whole, i.e., that the whole of the plan must be looked at and that the Board, as it stated, did not agree with Mr. Epstein's submission to it that the question it had to decide was whether the proposal, in any respect, was inconsistent with the Municipal Development Plan or any part of it."

You will not find too much more than that in the decision, but I accept both the way in which the Municipal Board handled the interpretation of the document, and Chief Justice Cowan's confirmation, as pretty persuasive authority, if not planning authority, that the whole of the document is to be looked at.

I was involved in a planning matter recently, when one of the planners gave expert evidence on only one of the policies. I dealt with that in a post-hearing memorandum. The policy to be dealt with was 'residential environments' but he didn't undertake in the course of his assignment, the study of any other policies. I sat wondering quietly, how he was ever going to answer the question which is invariably put to any expert witness, if not by Counsel then by the Board itself, and usually the Chairman, "Mr. X, you're an expert planner. In your opinion does the subject development, or the decision relating to it, meet the intent of the subject Municipal Development Plan?". How can you possibly answer that question, when you have admitted before that you have just studied certain policy sets? To me, this has the effect of rendering testimony almost useless.

The next thing I wanted to mention about how the Board handles a Municipal Development Plan is this: words are interpreted in accordance with the plain and ordinary meaning. This is a rule of documentary construction which is well known in the courts. I haven't seen this elucidated in the decisions of the Board, but that's exactly what it will do. If there is any difficulty whatsoever ascertaining what the plain and ordinary meaning is, then it's not at all reluctant to pick up, in the Board's case, the Oxford Universal Dictionary. You'll see noted where the Board resorts to the Oxford Universal Dictionary. The Board cannot be counted upon to inject pragmatic or convenient interpretation on the words of the plan. It will give every word of the language used, its plain and ordinary meaning.

I think the last comment I want to make with respect to how the Board handles a Municipal Development Plan is that it does not expect a reasonable development proposal to sit squarely with each and every one of the multitudinous, myriad, and varied policies and objectives in the plan. In the Canterbury Case it was argued that because there may have been in inconsistency with respect to scale and design, therefore the decision should fall, and the development should be frustrated. But the Board said, "No, this is not the intent - the word 'intent' means overall, and you can't reasonably expect any development to comply with the letter of all the varied policies and objectives". I think that's sufficiently important to warrant me referring to the Board's decision. The appellants led extensive evidence in an endeavour to show that the proposed Market Place Plaza offends the "intent" of the Municipal Development Plan. Counsel states on page 15 in his brief that the only question of concern to the Board is whether the proposal in any respects is inconsistent with the Municipal Development Plan. If so, a Council may not enter into a contract. The response was:

> "The Board does not agree with this statement. It is of the opinion that it is possible for a proposed development to meet the 'intent' of specific policies and objectives of the Central Business District Section of the Municipal Development Plan and yet to some degree, be inconsistent with some portion of the City-Wide objectives and policies of the Municipal Development Plan."

The above represents, I think, the most important thing that I can give you as to law up-date over the last five years. The Board's decision making will evolve, but somehow I don't think we'll see much more than the language than we've already seen as to how to handle the plan. The Board will not want to bind itself so rigidly as to prevent itself from doing the sensible thing in the next case down the road. There's a very interesting case incidentally, about this concept of precedent, in the 1981 case of Wilshar Advertising Limited and the City of Halifax. I commend the decision to those interested. Wilshar was the publisher of that well-known monthly magazine, "Atlantic Insight", and made an application for a development agreement to establish itself on Coburg Road in southern Halifax. City Council saw fit to exercise its discretion against this application, and so the solicitors for Wilshar Advertising appealed the matter to the Provincial Planning Appeal Board, knowing that by so doing they would run square into a decision made a year or so earlier by the Board, in the Armour Group Case. The Armour Group Case, as some people in this region will know, was that rather controversial condominium development at the site of the old Jubilee Boat Club. Armour, in that particular case, had made an application for a development agreement, but the City decided to exercise its discretion and not enter into an agreement. Armour appealed, and the Board found that the right to appeal did not exist for one who was not given a development agreement opportunity by the City. In other words, the appeal provisions relate only to either a party to an agreement, or an interested party who is not a party to the agreement. But the appeal provisions with respect to development agreements require as a prerequisite, entry into an agreement with the City and the developer. In this case, the Board has spoken quite explicitly and established a principle in this respect, yet the solititors for Wilshar Advertising tested Mr. Blois and his colleagues in 1981. I want to read from the Board's decision, portions which relate to the Board's practice on precedent or stare decisis. Counsel for the City filed with the Board, a post-hearing memorandum on the question, which states in part, "I have researched the texts and cases, including the recorded decisions of the Board, and could not find no judicial ruling directly on point". Counsel for the City stated, "It is important for appellants and respondants alike, to know with some assurance whether they are entitled as of right to an appeal hearing before the Board." If the Board in this case was to make a decision opposite to that made by it in the Armour Group appeal, it would be impossible, with any degree of certainty to predict the status of parties to future appeals whether in this issue, or any other issue. This is a point well taken as the Board is required under Section 53(1) of The Planning Act to prepare a written decision setting forth reasons for the decision, and it's obvious that the Board should endeavour to make its decision consistent with previous decisions where the facts and the law are similar or the same. The Board agrees with the contention of the City that the burden on the party asserting that the Board should change its decision, is extremely high. Counsel for the appellant filed with the Board a post-hearing memorandum on the question as to whether the Board is subject to the doctrine of stare decisis. In that memorandum, the appellant's counsel was of the opinion that the Board is not bound by its previous decisions, although he had stated that he had found no decisions applicable specifically to the Board. However, there is ample authority to the effect that the doctrine of stare decisis is not applicable to administrative tribunals, e.g., in Reid and

David, Administrative Law, page 106, the editors state as per tribunals, they are disinclined to be fettered by past decisions and frequently declare that they are not, but expressions of the view that decisions once made should stand are sometimes heard. The normal rule is that stare decisis is not applicable and a tribunal can apply different criteria from time-to-time. I think this is the concluding remark of the Board on the point. The Board is satisfied that stare decisis would not be a bar to the Board making a decision contrary to a previous decision of the Board in a case where the Board is clearly and unequivocally certain that its previous decision was in error. The Board proceeded to dispose of the Wilshar Case by affirming its correctness in the Armour Case. I think, therefore, for purposes of future cases, if you're absolutely convinced that a modification to the principle ought to be made, or that the original case in which the precedent was set was wrongfully decided, go to it, but the onus is clearly heavily upon you, and an impediment to your success.

The next point I wanted to pursue with you is what kind of evidence is appropriate in planning appeals. I bring that up because in my preparation I did have a word with the Chairman of the Municipal Board, because I've always been a little puzzled by what kind of evidence is called for in this kind of administrative tribunal. I speak of it in the context of an old decision and a new one. I take you back to probably a landmark decision by the Board, one of the first important cases that the Board tried - the Lord Nelson Hotel Case of 1971. It has more statements of precedent or principle or stare decisis than any other I've seen. The Board gave some valuable insights as to what kind of evidence would guide it in its decision making process. At page 31 of the 1971 volume, the Board agrees with the appellant's submission that the phrase "the best interests of the municipality" is to be interpreted in the light of planning considerations, and that the main guidance is to be obtained from professional qualified planners in various fields, such as urban economics, urban design, city planning etc.

I tend to believe that the planner's role does not decline, particularly in those cases before the Board which have as their central features conflicts of fact or conflicts of professional opinion. I have other thoughts though, in those few cases that can appear before the Board, where it's strictly a matter of known fact and the application of those known to the provisions of the Municipal Development Plan. In other words, I think it's entirely possible for an appellant to come forward without planning evidence, if there is no contentiousness with respect of the facts of the case, or conflicting planning opinion. But if there are, red danger signs must flash with you - don't ever expect to succeed for the most part in an ordinary matter before a Municipal Board without some expert planning opinion.

Now in dealing with the Lord Nelson Hotel Case, I address the matter of what is an interested person. There's been a lot of talk in the press lately on whether the gates of access to the Municipal Board ought to be pushed open, or whether they should be shut a little bit. Way back in 1971 the Board dealt with it this way. The evidence disclosed that the appellant, in this case the Lord Nelson Hotel, in addition to owning land in close proximity and diagonally opposite the site in question, also owned a parcel of land adjacent to and west of the site in question. The lot adjacent to the site was conveyed to the appellant by deed. The Planning Act does not define an 'interested person'. Centennial contends that the Board should equate 'interested person' to 'aggrieved party'. The Board cannot agree with this contention as it's of the opinion that "interested person" is a much broader and more flexible term than "aggreived party". The Oxford Universal Dictionary defines the word "interested" as "(1) concerned, affected having an interest or share in something, (2) self-seeking, self-interested, the opposite of disinterested, (3) characterized by a feeling of concern, sympathy or curiosity". An "aggrieved party", as defined by Black's Law Dictionary, is one whose legal right is invalidated by an unfair judgement. Certainly if any person could be categorized as an interested person, it is the appellant. In subsequent cases, I noticed the Board stating that it will give a very liberal interpretation to the words "interested person" in The Planning Act, and it in fact has done so. The Board may be confronted with a bit of a dilemma when it construes a provision in the new

Municipal Board Act, Section 27(4) on page 71 of this new statute - participation by interested person - "The Board shall permit any person, who demonstrates to the Board that he has a real and substantial interest in the subject matter of the proceeding, to participate in the hearing". I haven't given close enough scrutiny to that to ascertain whether participation is in fact commencing an appeal to this tribunal, or whether it's the spirit of intent of 27(4) to limit witnesses to participate in the hearing.

I think it's important for me to state again, on the question of burden of proof, it was argued by the appellant that the burden of carrying the question forward, that is as to whether Council's decision is unnecessary, etc., is on a person who wants the zoning changed. The Board does not agree with this portion of the appellant's argument and is of the opinion that the burden is on the appellant in all cases and is especially so where the appeal is from a decision of Council. That's one statement of firm law that has not altered over the eleven year history of the Board.

Back again, to the subject of witnesses - it is a legitimate comment, by way of legal up-date, to refer you to a statement made by the Board in the Canterbury Case. This is in the Board's decision (Page 12) of the Canterbury Case 1981 which says, I think on reflection, much more than the actual language: "Many witnesses gave evidence and it is not the intention of the Board to summarize the evidence of each of them. Some witnesses were qualified as 'expert witnesses' and many were not. All witnesses were cross-examined. In many instances, the opinions expressed by witnesses were honest opinions given as to whether they were for or against the proposed development comes within or without the intent of the Municipal Development Plan." My experience with the Municipal Board, and its predecessor, is that it always offers cordial hospitality to all witnesses. I've also noted that some lawyers seem to think that it's in order to commence another public hearing; that is, an appeal to the Municipal Board is simply an invitation to them to run another public hearing. As we all know, the considerations are somewhat different, and the dynamics are completely different, in presenting a case to a municipal council or a public hearing, and in presenting a case to the Municipal Board. But still I see any number of witnesses parade forward, many of whom know absolutely nothing about the Municipal Development Plan, to say that they are for a development or against it, on the theory presumably, that the weight of the case is directly proportional to the number of witnesses. We know that this is not the business of the Municipal Board. I want you to consider this matter in the context of Chief Justice Cowan's decision - he said some useful words about the division of functions between the Municipal Board and Council which I think are quite illuminating.

"The Municipal Development Plan deals with a large number of matters in the various sections of the city. City Council, in making a decision on any particular question is to have regard to various aspects of the plan, and must attempt to evaluate and assess relative weight to be given to the many factors which it is required to consider. Ultimately, it must strike a balance and make a decision. Unlike the Board, the Council is not required to set forth in writing its reasons for its decision. In my opinion, it is a fallacy to suggest, that when the Board hears an appeal from a decision of Council, it must not only go through all the processes and procedures for consultation and consideration set out in the plan, but also set out in its reasons for its decision, why it has done so. It is not the Board's function to make the decision. It is the Board's function to hear the appeal and consider the Municipal Development Plan and reach a decision as to whether the Council's decision cannot reasonably be said to carry out the intent of the Municipal Development Plan. It is that question that is assigned to the Board by the Statute, and it is that question that the Board considered and decided."

I would like to leave the Municipal Board for a moment and deal with the relationships among lawyers, applicants for development permits or development agreements, Councils, and the staff of a municipality. These dealings create legal relationships from which spring what is known in law as the 'duty of fairness'. This is not a new duty but this was invoked in the Canterbury Case. The last sixty-five pages of Chief Justice Cowan's decision are devoted to this duty of fairness. In order for you to appreciate what this duty is, let me draw from an extract of a 1928 Ontario case. "In dealing with a proposed by-law which involves a conflict of interest between private individuals who are affected, the Council while exercising a discretion vested in it by statute, acts in a quasi-judicial capacity, and its preliminary investigation and all subsequent proceedings ought to be conducted in a judicial manner with fairness to all parties concerned. The Council is empowered in cases like this to adjudicate between conflicting interests. In performing that duty, Councils are bound, like courts of justice, to see that every person interested is afforded full opportunity to present his views and intentions. Powers conferred on the Council carry with them an obligation to see that everyone affected gets fair play not only from the Council itself when passing the by-law, but from its officers and committees in the preliminary steps leading up to the final result."

In the Canterbury Case, some ten or eleven allegations of unfairness were made against not only the applicant, but against City Council itself and its staff, and Chief Justice Cowan reviewed these activities in the light of what he perceived to be the duty of fairness, and it makes for very interesting reading I think. It addresses such questions as whether or not there should be a new public hearing in the event there is a modification to the contract or to the position of one or the other parties, and to what extent communications ought to be made between members of Council after the public hearing, etc. It's a long, perhaps tedious sixty-five pages but it seems to me worth mentioning to you, the last thing that any of us want happening is to have our conduct sanctioned by a judge of the trial division. So, I guess you can compress it all into that old hackneyed phrase, 'praise fair play' and it's as good a rule as one can think when dealing in such hotly contentious matters as development applications.

I've made only a passing reference to the Municipal Board Act. I see by the program that this was the subject of a working session on legislation. Mr. Blois was to appear and, I understand, the other two members of the Municipal Board. Needless to say any attempt at a law up-date has been sadly insufficient if it didn't spend some time on the Municipal Board Act, but I am presuming that the members of the Board have dealt with this matter to your satisfaction. I incorporate all the truly intelligent remarks that the Board made to you in that session, and I disclaim whole-heartedly anything that they might have said otherwise.

TECHNICAL SESSION SERIES SUMMARIES

SCOPE:

The legal liability of planners and how to limit the possibility of being sued and found liable.

PANEL:

Blair Mitchell - Lawyer
Rucke and Mitchell

Doug Foster - Director of Planning
Cape Breton Metro Planning Commission

PANEL DISCUSSION:

Although few, if any, planners have been found to be professionally liable, insurers suggest that liability suits are inevitable. The term, "professional" carries with it the risk of legal liability. Clients suffering damage from a planner's professional advice could sue.

There are two kinds of liability:

1. contractual (promise to do something),
2. negligent misrepresentation (not taking into account all that a prudent and experienced professional would have).

In most cases, decisions of liability will involve economic loss, not just physical injury or property damage. Every mistake will not necessarily attract liability, only those errors that result from not applying the average degree of care based on experience and training.

Little, and only partial insurance exists for most planners - a number of government agencies carry 'errors and omissions insurance' as do some consulting forms. The question of liability for honest errors is complex.

To reduce chances of liability the Canadian Institute of Planners, Committee on Legal Liability suggests:

- Don't give advice without all the pertinent information and careful consideration. Be particularly careful answering telephone enquiries - caution clients that as to the nature of response, 'off-the-cuff, it appears...'. Inform people that free advice is just that and not to be acted upon.

- In carrying out work, be thorough and careful - you will be judged by professional standards, whether you used them or not.

- Be aware that "joint ventures" (planning teams) carry joint liability.

- Ensure that work is properly supervised and undertaken by qualified staff.

- A professional is expected to have a practical knowledge of the law relating to his profession; this includes knowledge of Acts and By-laws affecting planning, local requirements, etc.

- Don't guarantee estimates of cost or timing.

- The moment you believe you have a problem, hire a lawyer. Don't give anything out until the lawyer looks at it - protect your position.

- Planners should consider incorporating - not an ultimate answer, but will limit personal liability.

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Following is the paper presented by Doug Foster entitled, "The Legal Liability of Planners".

The draft report of the Legal Liability Committee of the Canadian Institute of Planners was submitted on April 27, 1979 and it is worth quoting from the first section of that report to begin this presentation.

> "It is accepted that where an individual or group of individuals hold(s) himself or themselves out as being specifically knowledgeable or qualified in some area of expertise that the public has a right to be protected against this not being the case. Therefore, the courts are resorted to in cases where compensation or penalties are sought. More specifically, a 'professional' is subject to liability for work carried out when special knowledge is claimed pertaining to the work.
>
> To date, few, if any instances of professional liability are on record pertaining to the profession of planning. However, with an understanding of the potential implications which might result from malpractice, those in the insurance field suggest that liability suits are inevitable in the future."

From my point-of-view, the term 'professional' carries with it a responsibility or liability. If we claim professional status, we are saying that when a client, either individual or collective, asks for and takes our advice, we are legally liable for the results that flow from taking our advice. If it is subsequently shown that our advice was faulty and that our client suffered damage from taking the faulty advice, then we are legally liable.

There are two kinds of liability, one that comes from our contractual relationship with the client and that which is sometimes called "negligent misrepresentation" - we have been careless or haven't taken into consideration all of the aspects of the situation that a prudent and experienced professional should have done. As you see, there is an element of judgement in this, we do not have to think of every possible aspect that might occur but must be in a position to demonstrate that we did all of the things by way of study and examination of the circumstances that could be expected of a careful planner at our level of experience. Should we advise in a matter which is outside of our knowledge and experience, even though it is a planning question, then we are again liable. For instance, we should not give advice on traffic planning unless we show by knowledge and experience that we are qualified to do so.

A number of government agencies carry "errors and omissions" insurance as do some consulting practices. However, this question of liability for honest errors and omissions is complex and is being extended to cover fields of professional advice that, in the past, were considered to be immune from this kind of attack.

Although we may be able to defend ourselves from this kind of attack, the actual defence may involve us in substantial legal costs. Also there is a question of liability in what the lawyers call "joint ventures". Quite frequently consulting planners are members of a team that also includes other professionals. It appears that this is regarded as a form of joint venture which complicates the question of liability. The Canadian Institute of Planners has been advised that those who underwrite this kind of insurance are becoming increasingly reluctant to provide an annual overall insurance policy for this kind of liability, particularly where professionals are involved in very large projects which may result in very expensive errors.

If you work in the private sector, you may be involved in designs for the subdivision of land. It is within the realm of possibility that you could design roads that do not align with existing roads. Unless you are good at redesign, you are likely to be held responsible for designs that cost developers unnecessary money incurred through such errors.

If you work in the public sector, you may approve or recommend approval of a subdivision which limits such things as fire access. If the limitation of such access results in death or injury because of a design (because as a municipal planner you did not insist upon proper and safe access and egress) then the potential exists for action against you for having approved or recommended approval of the application.

I know of only one case where a judgement between Davis et al and the Regional Municipality of Haldimand-Norfolk was rendered. In this judgement, the Municipality was sued because the Chief Planner apparently advised several dentists by telephone that there would be no problem in renting a portion of their dental clinic building to the Government of Ontario to use as an office. Subsequently, the Building Inspector refused to issue the permit and stopped alterations to the building.

The suit claimed that the Chief Planner had wrongfully advised the Plaintiffs. Although the suit failed, there are indications that had the facts been clearer, the Municipality could have been held liable.

Who is a Planner?

Although it is not the intent of this paper to delve into the question of licensing or registration of Planners, the question is somewhat unavoidable when dealing with legal liability. What constitutes "holding oneself out as an expert"? This is a very fuzzy area because Planners are neither licensed nor registered although there is a professional organization. In Ontario, legislation related to town and community planning is licensed under the Professional Engineers Act.

I can shed no light on this question except to say that every bit of evidence which could be used to prove that a person held himself out to be an "expert" or "professional" planner could and would be used to establish his or her legal liability. This would of course include the use of the letters, M.C.I.P. after one's name.

There are only two provinces in Canada where Planners are registered - Quebec and Saskatchewan; however, efforts are being made in other provinces to require registration of those using the name, although they would not have exclusive right to practice.

If you in fact wish to hold yourself out as an expert as virtually all of us do whether a member of C.I.P. or not, I would suggest you keep the following points in mind.

(a) Planners have a great potential for legal action being taken against them.

(b) Little or partial insurance exists for most Planners for the services, decisions or recommendations made in the course of their work.

(c) Many Planners to date have not been self-employed and therefore subject to direct liability. With the Master-Servant relationship being accepted in court, it is not likely that Planner employees could be sued by their own employer; however, the Planners in private practise are quite clearly subject to liability, particularly to their own clients.

In order to reduce your chances of liability, the following suggestions should be noted from C.I.P. Committee's Report on Legal Liability.

In legal jargon, a professional can be "exposed" in many ways: i.e., subject to professional liability.

"A professional's liability arises from two sources:

1. Contractual obligation assumed, or

2. Common Law - negligence or malpractice".

It is important not to increase this basic liability or exposure that a consultant bears at common law, by the terms of the contract (e.g., express warranties, guarantees, etc.).

The following is a brief discussion of common circumstances where professional liability has been incurred.

(i) Liability for the Gratuitous Opinion

"There is a growing body of authority to the effect that the professional cannot invoke the rule of privity of contract where the law imposes on the consultant, as it does on any person holding himself out as being particularly qualified, a duty of care which may give rights to third parties if the subject matter of the operation is made in the ordinary course of the consultant's business or profession."

"If you are called upon to verbalize (write, sketch, etc.) gratuitously, make sure that there is a clear warning that it is intended as such and not for the purposes of being acted upon."

"When asked as a professional to review another professional's work, act fairly and ensure that all evidence is before you and that you in no way were associated with the work under review. In acting fairly, there is an 'immunity of judges and arbitrators' but if otherwise, negligence may be claimed. Also, in giving an expert opinion, the professional must be aware of the 'state of the art'."

(ii) Liability of Others

"The assumption of liability of others over whom the consultant has no control should be avoided in all instances."

"If the consultant wishes to maintain control of the project, or some aspect of it, and retains specialists himself, then he assumes prime responsibility to the client for 'their' work - even though the subconsultants are not his employees but independent consultants."

(Note: "More that 30 percent of all architects' insurance claims relate to non-architectural services for which the architect became responsible in his capacity as prime consultant.")

"When one undertakes involvement in a Joint Venture on a 'joint and several' basis, one automatically is assuming the liability jointly and severally of the other parties to the Joint Venture, and this assumption of liability may arise for Joint Ventures such as:

(a) Consultants with other consultants as a design consortium, or

(b) Consultants and Project Managers as a design management team."

(iii) Deviations from Standard Practise

"In recommending new methods or procedures, the Consultant should protect his position so that if difficulties are later encountered, he will be able to prove that although he deviated from standard practise, he did not violate the applicable standard of professional care." Written records of preventive measures taken are important in proving the standard of professional care exercised.

(iv) Liability for Consequential Loss and Contingent Loss

By contract with the client, efforts should be made to limit responsibility directly to the work outlined in the contract. Spin-off effects (such as, 'consequential' losses) on others resulting from delays, omissions or negligent acts should be excluded through efforts to limit responsibility.

The above is similar to 'contingent' losses experienced when a third party suffers loss or damage as a result of the work of the consultant.

(v) Liability for Failure to Comply with By-laws and Regulations

"There exists a considerable body of authority to the effect that the consultant is expected to have a practical knowledge of the law relating to his profession sufficient to enable him to discharge his duties adequately. It should include a knowledge of the Acts and By-laws affecting planning, the requirements of local authorities and others."

(vi) Delegation

Ensure that work is properly supervised and undertaken by qualified staff; also, the consultant should avoid work being done in a 'branch' office where control of the project is centred in 'head' office with inadequate communication.

(vii) Certification

The consultant should not certify site conditions or other unless the site has been examined in detail at the appropriate times and under the appropriate conditions. This is important in the role of the expert witness.

In more detail, estimates of cost or timing should not be guaranteed by the professional.

(viii) Liability for Work Outlined in the Terms of Reference

Consultants are liable for work outlined in the terms of reference of the contract. (Where possible, a standard form of contract should be utilized since this document has been subject to interpretation a number of times.)

During the course of the work, all or any changes in the terms of reference should be fully documented and agreed to by the client. On a daily basis, refined or revised client's instructions should be noted in a diary or memo for future reference and follow-up.

Avoid "partial" services wherever possible but as a minimum, educate the client regarding the possible consequences of only proceeding with a part of the necessary work as opposed to a comprehensive program (including project monitoring, etc.).

The consultant should be fully aware of a change in the client (Board or Council, etc.) where the new body may not be familiar with commitments and decisions already made.

SCOPE:

The planning profession often suffers from a poor public image. By way of a brief introduction to public relations, this session attempted to offer solutions to change this situation.

PANEL:

Dr. Harold Oxley - Department of Public Relations
Mount St. Vincent University
Halifax, Nova Scotia

PANEL DISCUSSION:

Dr. Harold Oxley opened the session by stating that the context for planning is a good working relationship with the public. Planners have to plan around the desires and needs of these individuals for effective planning.

Public relations is very important in opening the lines of communication between the general public and the organizations that make decisions affecting the public. Good public relations is a necessary part of effective planning. The public is informed of topics affecting both the individual and organizations through public relations personnel.

Information must be channeled effectively to the general public, either through the media or more individual 'opinion leaders'. The media seek information and interpret it in the most desirable way for presentation to the general public. Public relations personnel often by-pass the route of the media as a method of informing the general public and direct more individual attention to specific sectors or groups informing the general public through opinion leaders. Opinion leaders are part of the general public who present information to specific target groups. This enables a more detailed and personal method of informing the public.

For effective public relations, the objectives of the organization and the types of individuals affected must be known by the public relations personnel to minimize conflicts that may arise from the decisions made. Public relations personnel must act as mediators between the two sides. Feedback between the organization and the public is necessary for public relations to be effective. Research must be conducted with the organization to determine the types of information to be made available for public use. The public must also be examined to define the kinds of information they want to know and their reactions to certain organizational decisions that may result. Negative attitudes may exist toward particular organizations and decisions and the cause of these attitudes must be recognized before public relations can make these reactions positive.

Because planning is done for the public, with their general interests in mind, effective public relations is essential for good planning. The planner is the public relations personnel for the planning organization and because of a possible lack of training in public relations, Dr. Oxley states that the planner does not have the expertise for pre-planning research. Dr. Oxley suggests that if planners placed a higher emphasis on good public relations, the planning profession would have a better public image and the process would be more effective.

SCOPE:

A discussion of Working Paper provisions respecting the subdivision of land.

PANEL:

Greg Haverstock - Assistant Director
Community Planning Division
Department of Municipal Affairs

Jack Leedham - Co-ordinator
Community Planning Division
Department of Municipal Affairs

PANEL DISCUSSION:

Greg Haverstock began by describing the proposed changes in the Working Paper regarding Subdivision Regulations. The present Act states that the Minister of Municipal Affairs may prescribe regulations respecting the subdivision of land. The Working Paper proposes that within twelve months of the coming into force of the new Act, the Minister shall prescribe regulations for the entire province, although these regulations may vary from municipality to municipality.

The Working Paper proposes a new definition of subdivision. Whereas at present, the definition covers the division of land into 4 or more parcels, the Working Paper proposes a specific definition of subdivision. Namely a division of land into two or more parcels. The Working Paper also provides for the inclusion of waivers from compliance with certain requirements of the regulations.

The Planning Act Review Committee recommended that subdivision of land be a strictly legal process as opposed to it being a first step toward approval for development. In order to provide some form of consumer protection, however, the Working Paper proposes an integrated system which, for example, will require lots to be of a sufficient size to be developed but which will allow for this requirement to be waived in those cases where a lot created is not to be developed, e.g., garden lots.

As in the present Act, the Working Paper provides for a municipality to adopt a Subdivision By-law, which is a sophistication of Subdivision Regulations in that it can include provisions for the installation of water and sewer services and the construction of roads. Subdivision By-laws must also include the provisions of the Provincial Subdivision Regulations, or more stringent provisions.

Jack Leedham elaborated on the procedural aspects of Subdivision Regulations and By-laws. Basically, there are three steps involved in the process:

1. approval of tentative plan,
2. approval of final plan, and
3. final endorsement of plan.

Included in this approval process, is the referral of a tentative plan to departments or agencies of a municipality or the Province for comment. Negative comments are noted on the plan of subdivision but do not affect the approval of the plan, with two exceptions:

i) if the plan of subdivision does not meet the Department of Health's Regulations concerning land to be serviced by on-site sewage disposal systems, it will not be approved.

ii) in a rural municipality, no plan of subdivision shall be approved until the Department of Transportation has approved all streets and roads within or abutting the subdivision.

In addition to the formal submissions, Mr. Leedham felt that the submission of a preliminary plan before the required tentative plan would be very useful. An assessment of a preliminary plan should result in a tentaive plan which does not have to be changed substantially for final approval.

The remainder of the session dealt with public and private roads, variances, and appeals.

SCOPE:

This session dealt with the various aspects of appearing as an expert witness both as a municipal employee and as an independent consultant including role, preparation, communication, and presentation of evidence.

PANEL:

John Bousfield - President
John Bousfield Associates Limited
Toronto, Ontario

Richard Matthews - Director of Planning
City of Halifax

Maurice Lloyd - Manager, Atlantic Region
Underwood-McLellan Limited

PANEL DISCUSSION:

John Bousfield focussed his discussion on six key aspects of appearing as an expert witness:

(a) Preparation - He emphasized the importance of being thoroughly prepared.

(b) Direct Evidence - He suggested identifying one, two, or three points to concentrate on and not to clutter the presentation with too much discussion or materials.

(c) Cross-examination - This can be expected to be quite rigorous and include the questionning of facts, research, and qualifications. It is important to answer only the question put to you and not to try to defend indefensible points.

(d) Re-examination - The important thing is to listen carefully to the question and answer only when it is fully understood.

(5) Critiquing - This involves critiquing the witness for the opposite side and impassiveness is the recommended rule.

(6) Reply - This can only be a response to an issue raised on the other side which could not reasonably have been foreseen.

In concluding, Mr. Bousfield noted that it is better not to get involved if there is inadequate time to prepare, if you have misgivings about the case, or if you are emotionally involved. He recommended that the witness not stray from good planning principles and remember that one's professional reputation is on the line.

Richard Matthews discussed the role of the planner appearing before the Nova Scotia Municipal Board and how this role may differ depending on the function he is to serve by being there. He noted that a witness should concern himself with his purpose, with the believability of the case itself, and how he will communicate. He stressed the importance of establishing qualifications and credibility at the outset.

He discussed the relationship between the municipal planner as a witness and his Council. He noted the importance of making one's opinions known to Council and to document any disagreements with staff reports.

Mr. Matthews also stressed the importance of good communication with one's lawyer, of being familiar with the material and of giving consideration to how one will perform. He suggested that some thought be given to how well one would cope with stress under examination and especially re-examination.

Maurice Lloyd commented on appearing as an expert witness from the perspective of a municipal employee as well as that of a consultant. He noted that the testimony will be affected depending on which position one is in.

As a consultant, it is important to maintain the image of an independent expert and to be able to personally support the case. It must be kept in mind that lawyers are in an advocate position but this is not the case for the expert witness.

He noted that in Nova Scotia, evidence can be placed before the Municipal Board by oral testimony, exhibits, or affidavit, the latter being at the discretion of the Board. The type of evidence varies, depending on whether or not a Municipal Development Plan or a Regional Development Plan is in place, in which case the emphasis is on whether the proposal meets the intent of the plan or not.

Mr. Lloyd concluded with the suggestion that when giving evidence, it is best to be brief, concise, and to the point.

SCOPE:

The session dealt with effective visual and written presentation skills.

PANEL:

Tony Crouch - Director
Publishing and Advertising
Department of Government Services

Emily Gratton - Audio-Visual Specialist
Department of Government Services

PANEL DISCUSSION:

The session dealt with the techniques of, 'getting your message across' and the characteristics of the written or published media as well as the audio-visual media.

It was stressed by both speakers that these are general guidelines which should be adhered to to maximize the efficiency of the presentation.

These are:

(a) Use the right median for your particular audience - (For example, newspapers get a wide exposure - most 'bang for buck', relatively cheap).

(b) Prepare the right message - Keep it clean and brief, outline your message concisely, make use of demographic information to define audience.

(c) Provide sufficient exposure - Repeat advertisement or message sufficiently to make point.

(d) Prepare budget - Gear your advertising program to match your funds. Often a message can be effectively conveyed without the need for elaborate and expensive media.

Examples of media available include newspapers, leaflets, newsletters, radio and the audio-visual format. Both panelists stressed the need for a quality product to convey your message, and this means utilizing expertise when putting together your particular program.

In summary, the rules for an effective public participation program are:

1. define your objectives,
2. know your audience,
3. communicate effectively - be concise,
4. give it sufficient exposure, and
5. keep within your budget.

By way of public information, there will be a, "Government Services Guide" available early in the new year outlining government departments, programs, persons involved, contacts and so on through the Government Bookstore.

SCOPE:

A brief discussion of the section of the Working Paper dealing with Provincial Policy, including both the rationale for and the implication of these policies.

PANEL:

John Mersereau - Co-ordinator
Community Planning Division
Department of Municipal Affairs

Gerrie Masters - Former Executive-Secretary
Planning Act Review Committee

Ron Simpson - Director of Planning
Community Planning Division
Department of Municipal Affairs

Mike Simmons - Secretary
Deputy-Minister's Committee on Land Use

PANEL DISCUSSION:

As a brief introduction to the proposed legislation, the moderator, *John Mersereau*, briefly outlined the 'hot' points of the section on Provincial Policy. His main points touched on the establishment of:

1. an Inter-departmental Committee to advise on Provincial land use.
2. The right of the Provincial Government to adopt provincial land use policies and regulations and to implement them where no Municipal Development Strategy is in effect.
3. An onus on municipal councils to conform to Provincial land use policy when adopting a Municipal Development Strategy.

Gerrie Masters explained how many of these ideas were initiated during P.A.R.C. meetings with the public. P.A.R.C. felt that there was a lack of direction and co-ordination in provincial planning. Regional planning was being used to fill the gap left by a lack of provincial policy. P.A.R.C. pointed out there was:

1. a division between provincial and municipal interest,
2. a perceived lack of coordination between departments, and
3. a lack of provincial land use policies to support resouce development in rural areas.

In response to those concerns, P.A.R.C. published their recommendations in its White Paper entitled Final Report and Recommendations of the Planning Act Review Committee in November 1981.

Ron Simpson commented on how the Department responded to P.A.R.C.'s recommendations. Its response is contained in the "Working Paper in Legislative Form". There were some adjustments between P.A.R.C.'s "White Paper" and the "Working Paper" but mainly in form, not content. Major changes were:

(a) The Department recommended that the White Paper's use of the word 'shall' be changed to 'may' in regard to the Governor-in-Council's adoption of Provincial policy and the creation of an Inter-departmental group.

(b) There should be an economic context for provincial land use planning.

Michael Simmons explained the Deputy-Minister's Committee reaction to P.A.R.C.'s recommendations and the proposed legislation. Its concern is directed toward the Provincial Policy Section in which the creation of an inter-departmental committee is recommended. The Deputy-Minister's Committee now works well internally, but feels nervous about taking a public role as the Working Paper proposal would entail. Another concern of the Committee expressed by Mr. Simmons would be the appointment of a Chairman for the new Committee. At the present time, Chairmanship rests with the Department of Development but the proposed legislation indicates control delegated to the Department of Municipal Affairs.

The session concluded with a wish expressed by all panelists that those attending those sessions, analyze the "Working Paper" and make their views known to the Department of Municipal Affairs.

SCOPE:

The session dealt with the functions of the new Nova Scotia Municipal Board. Discussion focused on the Board's jurisdiction and matters of procedure.

PANEL:

Darrell Wilson - Member
Nova Scotia Municipal Board

Elizabeth Lawrence - Member
Nova Scotia Municipal Board

PANEL DISCUSSION:

Elizabeth Lawrence opened the session by giving the historical background of the former Provincial Planning Appeal Board. Its replacement, the new Municipal Board began on June 1, 1982. The Board's jurisdiction is greater than that of its predecessor as it covers appeals under the following Acts: The Planning Act, the Assessment Act, The Village Services Act, The Shopping Centre Development Act, the School Board's Membership Act, and the Municipal Boundaries Representation Act.

To date, the Board has held nine planning appeal hearings and has ten pending. Approximately twice as many appeals are heard under the Assessment Act as are heard under the Planning Act. (Thirty-nine appeals have been filed under the Assessment Act.)

The Municipal Board has three full-time members appointed by the Governor-in-Council, whereas the Provincial Planning Appeal Board consisted of five part-time appointed members. There is one designated Chairman (unchanged). The former position of Secretary to the Board becomes the Clerk for the Board.

A major difference between old and new Boards is the dropping of the requirement that three members must sit at all hearings. Section 16(3) of the Municipal Board Act permits members to sit separately at hearings.

Darrell Wilson discussed regulations and rules of procedure under Section 23 of the Municipal Board Act. He stressed that the hearings are not as formal as a court of law. Although appellants are encouraged to have legal counsel, it is not mandatory. Similar to a court of law, costs can be awarded, although interestingly enough, not in planning appeals.

The Board attempts to hold hearings in or near the municipality affected by the application. Notice of a hearing must be advertised in local newspapers for three consecutive weeks. The appellant normally pays this cost. Parties to any application for appeal, the Minister of Municipal Affairs, and any municipality or agency affected must receive notification and may appear and participate in the hearing. Any person who demonstrates to the Board that he has a real and substantial interest in the subject matter may participate in the hearing. This point prompted some discussion from the audience as to who constitutes an 'interested person'.

A decision of the Board is considered to be an order of the Supreme Court of Nova Scotia and is enforced in like manner. All decisions of the Board are in writing and give the reasons for the decision. Decisions are published annually.

The session closed with discussion on the similarities and differences between the Nova Scotia Municipal Board and the Ontario Municipal Board.

SCOPE:

A discussion of the Working Paper provisions respecting Municipal Planning Strategies and Land Use By-laws.

PANEL:

Valerie Spencer - Planning Supervisor
Policy Division
Municipality of the County of Halifax

Peter Oickle - Director of Planning
Lunenburg County District Planning Commission

Doug Foster - Director of Planning
Cape Breton Metro Planning Commission

PANEL DISCUSSION:

Valerie Spencer began the discussion by briefly describing some of the major planning issues in Halifax County. She thought that in general there was very little that was new in the proposed legislation. The biggest impact was in the line of public participation. She thought that legislating public involvement could lead to a rather lengthy process which could mean the production of community plans which do not deal with the larger land use issues. In addition, she thought that the increased public involvement would require a new expertise which may not be presently available.

Peter Oickle outlined the planning situation in Lunenburg County. He thought that the new Act would not offer many changes in what was now taking place. He said planning was not well received in the rural areas of Lunenburg County and that this was especially true when looking at land use controls. He thought the new proposal to allow Municipal Planning Strategies without imposing land use controls may make planning more acceptable to county councils. In general, he thought that the new Act would tidy up a lot of things, but still all the answers were not there.

Doug Foster related the situation in Cape Breton County where a Zoning By-law was in place with no plan behind it. He said this was a nightmare to work with because there was no basis on which to make decisions. He thought the new Act did not appear to make many major changes from the present one. He liked the proposal which allows the municipality to articulate its own policy for non-conforming uses. Also, he likes the fact that the new Act spells out the grounds for approval by the Minister, of the Strategy and Land Use Bylaw. He expressed the wish that this would result in a speedier plan review process with the Department of Municipal Affairs. Finally, he was concerned with the designation of Private Parkland Section. He thought this was cumbersome and not likely to be used very often. He said he would personally try to achieve the same thing through other means.

Discussion and audience questions then focussed generally on the issue of public involvement in the planning process. Some people felt that public participation took too much time and tended to become political in nature. The end result would be a plan that reflected the more petty issues of the day - what some people called a 'community plan'. It was argued that public education did take time and that although the politicians had a three year hang on, the citizens were constant and they tended to create a separate constituency. Also, it was suggested that perhaps so-called 'community plans' were what was needed and that they should be considered a step toward addressing the larger issues - in a sense, establishing the planners' credibility.

SCOPE:

Description and function of Environmental Control Council. Case Study at Aylesford Lake - Cottage Developments - using phosphorous loading model to determine lake capacity.

PANEL:

Morris Haugg - Executive-Secretary
Environmental Control Council

Bill Hart - Professor
Consulting Liminologist
Technical University of Nova Scotia

Malcolm Maxwell - Planner
Department of Municipal Affairs

PANEL DISCUSSION:

Morris Haugg began by stating that the Environmental Control Council is not a planning tool or process. The E.C.C. was set up under the Environmental Protection Act in 1973. There are fifteen members, eleven of which are representative of different disciplines and four of which are at large. The Executive Committee has three members.

The E.C.C. functions as an advisor to the Minister of the Environment on any environmental issue. It also functions as a Board to adjudicate matters on any issue the Minister cannot handle, as well as a tool for citizen input into government.

The E.C.C. has had three board hearings to date:

1. New Waterford, Kerie Lake, concerning tailings at a DEVCO site,
2. Aylesford Lake, 1981,
3. Industrial Park in Windsor Junction Area, 1982.

The Aylesford Lake Hearings concerned Scott Paper's decision to open the lake by establishing roads for new cottage subdivisions. One of these subdivisions was to contain forty new lots, another contained sixty lots and another thirty-five lots. The lots were to range from 40,000 square feet to 60,000 square feet. The E.C.C. acted as a tribunal in the Aylesford Lake issue. They looked at septic tank uses for new cottage development on Aylesford Lake. They also recommended that an expanded study be undertaken ensuring public input. This study looked at the type of water in the lake, the depth of water, the vegetation and the capacity of the lake to flush itself.

Bill Hart was personally involved in these studies at Aylesford Lake. He was quick to point out that these studies were undertaken only because of the intense public outcry from existing cottage owners on Aylesford Lake. Hearings brought out the fact that there were no requirements for proper development of any water body in the province, including salt water shorelines. These public hearings brought out facts that no requirements exist to prohibit 2,000 or 10,000 cottage lots from being developed on any given lake, even though they would hinder lake quality.

Recommendations made by Mr. Hart's study included cleaning up existing developments on Aylesford Lake and eliminating 65 new lots, no development on the east side of Aylesford Lake, and the fourth phase of proposed development be permitted to proceed when Nova Scotia developed criteria on lakeshore development.

Mr. Hart summed up his remarks by saying that people in this province must realize that we are not a pioneer province or frontier. We must have controls, even though many people oppose them. Public education and involvement is the key to getting regulations in place with the least amount of friction. We can learn from case studies conducted in the United States, Ontario, and in our own backyard.

Malcolm Maxwell bridged the gap between comments made by Mr. Haugg and Mr. Hart. Mr. Maxwell stated that many land use decisions with environmental implications to come will be made at the local level. Because this is happening, municipal councillors will need to become more knowledgeable and the public will want more public hearings on these issues. He added that municipal policies with respect to lakes must:

1. state measurable water quality objectives,
2. state clear progression to the objectives, and
3. recognize the importance of technical evidence.

Planners working with these policies must determine how much development can occur overall, how much development can occur on each lake, and how much development each lake can support.

* * * * *

SCOPE:

This session focussed on an approach to public participation or involvement in the planning of small communities, as developed from experiences in Ontario but considered useful in the Nova Scotian situation.

PANEL:

Dr. Jackie Wolfe - Professor
School of Rural Planning &
Development/Geography
University of Guelph

PANEL DISCUSSION:

Dr. Wolfe began the session by elaborating upon her theory of public participation; namely, responsible/responsive planning, introduced during her keynote address. This was followed by a number of questions with regard to these concepts, and then discussion moved on to application in specific Nova Scotia planning situations.

Dr. Wolfe first stated that the key to planning, specifically at the local level, as she sees it, is to be aware of the appropriate planning related activities necessary for the various community members. Of course, there would be interest groups, elected officials, the general public and so on. Each of these would have a different concept of what a plan should do, and what it actually can accomplish. Knowing your community is the primary factor in an effective planning program. This, she said, can be accomplished by doing one's 'homework'. Dr. Wolfe referred to the following as some of the pertinent areas:

1. What is the planning climate in your community? Where does planning stand at this point in time in the minds of the various groups - elected officials, interest groups, the general public and even the agency itself? But don't just rely on the information from any previous planners that there may have been-obtain information first hand.

2. Next, determine where the pressures to carry out a planning exercise, be it a general plan or a detailed area plan, are originating. Are they coming from a higher level of government, municipal officials or perhaps from strong lobby groups? If you know who is initiating the process, then you'll be better able to judge the response of the various participants, particularly the general public, to the planning process. In this way, goal setting for the plan can be more realistic.

3. With this pertinent background information in hand, it is now possible to determine what sort of planning activities are going to be necessary for a successful planning program. For example, how much general education, issue identification and so-called 'softening up' of the general public is going to be necessary? In addition to these various publics (groups within the population) realize how much they do and don't know about the planning program. This will certainly help to determine what sort of public relations role is required.

4. It is important to develop a meaningful community profile: not just the basic statistics of the area, but a comprehensive understanding of its vital workings. Who are the key people in the community - the opinion formers, the special interest groups, the movers and shakers, etc.

5. What are the issues of importance to the community, and more particularly, how do the various publics react to them and what are the options available for dealing with them? Polarized issues, either between the planning agency, the general public or amongst the community itself, especially those with a large number of options, offer the greatest challenges to planners.

6. Lastly, how do the community members communicate amongst themselves and make decisions? Is there an oral tradition or is information exchange via another medium?
   - How does your community ultimately come to a decision on an issue, through its elected officials or by way of other influential people?

Dr. Wolfe then suggested a few things to consider when developing a public participation program:

1. keep your public participation program simple,
2. but at the same time don't try to hide or gloss over things,
3. involve the public early in the planning process, and
4. don't consider issue formulation to be a pre-requisite to public involvement.

At this point, a number of the audience became involved. Proper definition of the planner's role in the process, particularly one's relationship to the council and the community in general, was a main focus of discussion. Also the importance of carrying out planning within the realities of the political situation. One participant suggested that planners be ever wary of committees established to represent the public, they may not be on track. Keep your politicians aware of the planning process and your readings of the community pulse. As well, clarify with the general public what a plan can and can't do. Many people feel that if they have voiced a concern, it will be incorporated into the plan.

SCOPE:

Presentation of two case studies relating to past efforts in the area of inter-municipal planning and discussion of Working Paper proposals on this topic.

PANEL:

Peter Nelson - Planner
Town of Truro

Stewart Bishop - Director of Planning and Development
Municipality of the County of Colchester

Paul Campbell - Consulting Engineer
Underwood-McLellan Limited

PANEL DISCUSSION:

Paul Campbell outlined the events leading to the protection of the Lake Major Watershed Area as a source of water supply for the City of Dartmouth. This process involved the establishment of a working committee comprised of representatives of the City of Dartmouth, County of Halifax, Provincial Departments of Health, Environment, and Municipal Affairs, C.M.H.C. and residents of communities located in the watershed lands. The mandate of the committee was to prepare a strategy which would ensure protection of the City of Dartmouth's water supply. Mr. Campbell indicated that the working committee was successful in achieving this goal for the following reasons:

1. There was only one major issue to be dealt with and this issue was clearly defined,
2. community involvement was strong,
3. strong political support for solution at the Provincial level, and
4. strong support from senior bureaucrats.

Stewart Bishop and Peter Nelson discussed issues relating to the Truro-Bible Hill, Colchester County Joint Planning Advisory Committee (J.P.A.C.) which was created in 1972 and disbanded late in 1979. The role of this committee was given as follows:

1. a depository of information,
2. a forum for discussion of inter-municipal problems,
3. to provide technical advice on local planning problems,
4. to promote regional co-operation.

Reasons given for the failure of this inter-municipal planning experience were as follows:

1. a negative attitude toward planning on the part of the Councils involved,
2. J.P.A.C. was never perceived to have any power or authority,
3. lack of trust between participating municipalities,
4. J.P.A.C. became identified with provincial push in area of regional planning,
5. Councils felt that J.P.A.C. was out of control,
6. lack of strong municipal planning base at outset, and
7. too many issue to deal with.

It was generally agreed that the proposals respecting Inter-municipal Planning in the Working Paper were acceptable in theory; however, considerable doubt regarding their eventual application was expressed. The following comments briefly describe the discussion surrounding this topic:

1. more appropriate that single issues be addressed rather than many at once.
2. a municipal planning base must be in place prior to creation of a J.P.A.C.

3. problem is one of process, rather than planning,
4. level of maturity of Councils not sufficient to ensure healthy future of J.P.A.C.,
5. provincial support and encouragement is a necessity, and
6. co-operation will not happen just because enabling legislation is in place.

INFORMATION EXCHANGE

INFORMATION EXCHANGE

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Informal, round table discussions on various topics provided access to up-to-date information on the following subject areas:

1. NEW HEALTH SUBDIVISION REGULATIONS

   Discussion Leader: Peter Casey, Director
   Division of Public Health Engineering
   Department of Health

2. LEGAL ASPECTS OF SOLAR ACCESS IN NOVA SCOTIA

   Discussion Leader: Susan Holtz, Energy Analyst
   Ecology Action Centre

3. COMPUTERS AS A PLANNING TOOL

   Discussion Leader: Rick Spanik, Director of Planning
   Pictou County District Planning Commission

4. DEPUTY-MINISTERS' COMMITTEE ON LAND USE

   Discussion Leader: Jennifer Phillips, Co-ordinator
   Maritime Resource Management Service

5. IMPACTS OF OFF-SHORE DEVELOPMENT ON THE AESTHETIC ENVIRONMENT

   Discussion Leader: Robert Parker, Head
   Environmental Planning and Design
   Nova Scotia College of Art and Design

6. COMMERCIAL DEVELOPMENT IN TODAY'S ECONOMIC CLIMATE

   Discussion Leader: Robert Stapells, President
   Cantebury Group Limited

7. NON-PROFIT HOUSING

   Discussion Leader: Kim Stewart, Planner
   City of Dartmouth

8. SOCIAL IMPACT ASSESSMENT

   Discussion Leader: Ann Wilkie, Head
   Department of Urban and Rural Planning
   Technical University of Nova Scotia

9. CLASS IV CLASSIFICATION SYSTEM

Discussion Leader: Peter Newbould, Co-ordinator
Community Planning Division
Department of Municipal Affairs

10. PLANNING FOR OFF-SHORE DEVELOPMENT

Discussion Leader: Robert Russell, Assistant Director
Industrial Benefits Office
Department of Development

11. FEDERAL LAND USE POLICY

Discussion Leader: Roger Beardmore, Atlantic Regional Director
Lands Directorate
Environment Canada

12. PRIVATE ROADS

Discussion Leader: Emmerson King, Assistant Director
Maintenance Division
Department of Transportation

SYNOPSIS OF SEMINAR HIGHLIGHTS

SYNOPSIS OF SEMINAR HIGHLIGHTS

Dr. Jackie Wolfe
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I don't intend to give you a synopsis but what I do intend is to try and give you some of the highlights from my personal perspective. One of the one liners that really tickled my rather warped sense of humour was given by John Bousfield. He said, "Planning in my experience is really not very important". I don't know, I suspect that we all acknowledge a certain grain of truth in that. We tend to have a planning framework that with its land use orientation perhaps doesn't really address some of the more fundamental issues, cannot, and perhaps should not. Perhaps there is a sort of frustration for some people and perhaps it is also the reason that in some of the more remote planning offices, they go ahead and do their daily business without too great a reference, to the sort of legal framework we have had presented to use that we know exists for us. I think that the seminar as a whole really gives life to what John stated - that rather sweeping statement - clearly, planning is very much alive and well here in Nova Scotia.

I've been most impressed by the expertise, by commitment, by the number of students who are here. I have been impressed too by the organization of the seminar and I'd like to comment on a couple of things that stood out throughout the week. One of them was the very effective mix of the sessions. I felt that having the longer sessions and the technical sessions and particularly the round table was most effective. I don't know whether many of you entered that room wondering what you got into. There were these eleven tables and people were beginning to sit down. I must admit I found it very, very effective, although two things remain in my memory from that. One was (and I don't think they're here today) one was the two gentlemen from the Federal Government about to tell you about Federal policies - I was the only one who showed up at that table! The other was the number of people who were clustered around the private roads table, which to me says something about planning priorities in Nova Scotia!

Another thing that I remember from that too, was the deep discussions that some people got into at one of the tables led by Fran Robertson and at the end of the second session, that same group was still at it! Another thing that I must say that I liked and appreciated in the organization as a format was, and I know I'm rambling on a little bit now, was the amount of time you managed to give to each session so that there was opportunity to deal with topics with some detail and in some depth. I find at other conferences you get ten minutes for presentation, discussion and that's it! And I truly appreciated it. I should say too that the conference really started for me on Saturday morning and I want to express my appreciation to one of your colleagues in Pictou County for giving me that orientation field trip discussion which put this conference in some perspective for me because I was introduced to planning and politics in Nova Scotia, Pictou County in particular, and it certainly helped me to gain more meaning from the sorts of discussion that you had here.

There are three things that have stood out for me, and I think they are very closely inter-twined. One of them is the planner as a specialist, particularly the range and breadth of knowledge and skills that you have to have and which attempt to impart some additional knowledge and skill. The other clearly, is the legal framework within which we operate and sometimes around which we operate and thirdly is the relationship between us as planners and our planning constituency.

I'd like to say a few things about the planner as a generalist and say yes, in a sense we certainly are because we have to have an incredibly broad range of knowledge in the way of skills and a conference like this reminds us of how ever-expanding that range of skills and that knowledge has to be. We have been introduced to solar access, to off-shore resources, to mini and micro computers in small planning offices. All these things which have to have been added to an already burdensome range of knowledge and skill that we have to exercise.

With regard to the legal framework, many of us were sharply reminded of the legal setting in which we formally operate. The Planning Act setsup the framework, we go about our business, and the the Planning Appeal Board or Municipal Board is a test place for some of our work. I suspect that on a day-to-day basis we spend much of our time in a sense, doing the fence mending, ditch digging, and store minding of day-to-day planning business and often forget that framework which embraces us on either side.

I wonder too whether you were all as conscious as I was of the ripple of response (and I'm not sure whether it was surprise, agreement, or disagreement) when Ted Wickwire commented yesterday that the Appeal Board will look at intent by studying the whole Municipal Development Plan document and in his experience, staff reports made virtually no reference to that. I felt everybody respond, but I'm not sure how to interpret what that response was.

A third thing is this. Clearly, I am somewhat interested in public participation, P.R., call it what you will. It seemed to me that we had focussed our attention on role and activities - these being our constitutency, our Councils, or backroom boys and people in general. I know concern was expressed in one of the technical sessions about our lack of a power base, another about the planner as a planning expert and one of the things that I do remember and that was a question, is whether we really could define so-called 'sound planning principles'. I remember that back from John Bousfield's talk. I think it also falls into the question to the extent to which we are advisors or something more to our Council.

My impression from the sessions on The Planning Act (and I may be entirely wrong in this) as it is not an in-depth study. I am simply trying to pick up bits and pieces from the presentations and discussions with you. It seemed to me there were no surprises and no fundamental changes in the proposed new Act. What I was able to pick up was what was implicit in the Old Act is now simply more explicit. I'm sure this is a tremendous over-simplification, but that is what I pick up - clearly you are being asked for input and I suspect that most people will be responding in the sense of asking what does this mean for me in my work, rather than looking at the Act as a whole. Perhaps one might suggest that you try and do both.

A particular concern that emerged at one of the sessions was over the mandatory public involvement; and I think it should be a concern. Certainly, it will have the effect of further stretching timeframes for plan development. It will almost certainly open up issues that perhaps you'd rather not have made and also that planning really can't address. It was certainly further criticized as a political exercise of planning and it will certainly test your Council's commitment to planning in a more open sense.

Dr. Jackie Wolfe
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The highlights that I pick out form the sessions on the Municipal Boards tend to come from my rather different perspective on the Ontario Municipal Board than that expressed by John Bousfield. I enjoyed his critical analysis, but I can't say that I agree with all his points. Second, the Ontario Municipal Board may have given a legitimacy to the profession and to planning as John suggested but clearly too, because of the elaborateness and very heavy legal aspects of the Board, it has made that Board pretty inaccessible to people who do not have the financial resources to appear before it with very well versed legal counsel. I do wonder if that is the sort of role which Nova Scotia would wish to follow. Clearly too, the imprint of the challenge of the Municipal Board is very important. Reference was made to some changes in the function of the Board in Ontario with changes in the Chairman, and although clearly Chairman Blois has a great feel for the Nova Scotia situation as it is now, I think one does have to be aware of the imprint that Chairmen have on such Boards. For us as plan makers, it seemed to me that there were a couple of vivid reminders during the talks that although the Board interprets the intent of the Municipal Development Plan by the whole document, it also has to interpret and make its judgements on the basis of what is actually in the plan not what they thought was there, what we intended was there. A couple of people gave us vivid examples of things that were not in the plan and how interpretation has to be made on that basis.

So, in conclusion, I would say that planning is clearly a public, a political, a legal, and a professional activity and you need to be every day people to be able to marshall the knowledge and skills to do it and I wish you all very well!

Doug Foster
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Ron asked me to do this as a living example of planners' menopause in Nova Scotia! I almost didn't come to this conference. I looked at the theme of odds and sods - the focus over the previous years. It's always been an excellent conference - one that we're all very interested in both at the provincial and municipal level; however, there certainly is a planning malaise that we were discussing this morning that I find is not unique to Nova Scotia. We're feeling the glow has worn off. As a person who has started out in planning in the 1970's, I can assure you it was a very exciting time. The people involved were extremely interested. It was very exciting for me personally and several people who were involved at that time were keenly excited about what they were doing - they thought it was very important. A lot of that glow has worn off for me personally, and it's one of the reasons why I wasn't looking forward to this conference as much as previous ones. However, I feel much a part of it I'm glad to say. There are some exciting things that are happening and people I've been talking to are keenly interested in what they're doing. There are some black clouds, but as one chap was saying, "municipal planners can take heart from the fact that they don't work for the Province, and the provincial people can take heart from the fact that they don't have to work with the municipal units!".

Actually, I was amazed at the Working Paper. I had hopes we would be arguing with The Planning Act. There was a time when I had almost lost that hope. I take heart too from the kind of dialogue that did go on across the hall, some heated debate, new health regulations, etc.

One thing that gives me the greatest incentive to stay on and keep at it, is that Nova Scotia is a slow province to understand and know the actors involved in the thing and we seem to have a pretty healthy balance between the municipal level and the people working at the provincial level. We're certainly not in the position perhaps ten years ago when planning was, for the most part, something that emenated from Halifax. We now have strong planning offices throughout the province. I think that's a very healthy sign and we tend to keep each other honest. I think it's through vehicles like this we can continue!